

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 40

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THE UNITED STATES OF AMERICA, PETITIONER,

*v.s.*

GULF REFINING COMPANY.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, 1922, of said court, before the Honorable Robert E. Lewis and the Honorable William S. Kenyon, circuit judges, and the Honorable Tillman D. Johnson, district judge.

Attest:

[SEAL.]

E. E. KOCH,

*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to wit, on the nineteenth day of July, A. D. 1921, a transcript of record, pursuant to a writ of error directed to the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Gulf Refining Company was plaintiff in error and the United States of America was defendant in error, which said transcript as prepared, printed, and certified by the clerk of said district court in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to wit:

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE R. L. WILLIAMS, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

UNITED STATES OF AMERICA, Plaintiff,  
Criminal vs. No. 3716  
**GULF REFINING COMPANY**, a Corporation, Defendant.

**GULF REFINING COMPANY, a Corporation,**  
*Plaintiff in Error,*

**UNITED STATES OF AMERICA, Defendant in Error.**

*Be It Remembered*, that at a Special Session of the United States Court for the Eastern District of Oklahoma, held at Muskogee, Oklahoma, on the 22nd day of November, A. D. 1919, the grand jurors of the United States of America, duly empaneled, sworn and charged at the term aforesaid, of the court aforesaid, returned into court Indictment No. 3716, and others. Said Indictment No. 3716, being against the Gulf Refining Company for violation of "The Act to Regulate Commerce," approved February 4, 1887, as amended, and is in words and figures as follows, to-wit:

**Indictment—Violation of "The Act to Regulate Commerce,"**  
as Amended. 32 Stat. L. 847, 34 Stat. L. 584.

United States of America, Eastern District of Oklahoma.

In the United States District Court for the Eastern District of Oklahoma, at the Special March, A. D. 1919, Term thereof, at Muskogee.

## COUNT 1.

The grand jurors of the United States of America, empaneled, sworn and charged at the term aforesaid, of the court aforesaid, to inquire into and due presentment make of offenses against the United States of America, do, upon their oaths, present, find and charge:

I. That throughout the period of time from the first day of December, 1916, to and including the first day of March, 1917, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Kiefer, in the State of Oklahoma, and the shipping of said gasoline from said Kiefer to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time St. Louis-San Francisco Railway Company was a corporation organized and existing under the laws of the State of Missouri, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the laws of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said re-

spective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Kiefer, over their aforesaid through railway route, to said West Port Arthur, to be thirty-three (33) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Kiefer to said West Port Arthur, over the aforesaid route, would be computed and imposed at the aforesaid rate of thirty-three (33) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars; and that the said rate of thirty-three (33) cents per one hundred pounds was the lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 2 to 15, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 17th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 8049 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1030," consigned to said Gulf Refining Com-

pany; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,143 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and at the point last mentioned did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$177.35 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 15th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.55, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 2.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the cir-

cumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 4th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 72,037 gallons, then and there contained in 9 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shall capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1001"	8,158 gallons
"G.R.C.X."	"1072"	8,138 gallons
"G.R.C.X."	"1209"	8.092 gallons
"G.R.C.X."	"1239"	8,099 gallons
"G.R.C.X."	"1602"	8,023 gallons
"G.R.C.X."	"1607"	8,016 gallons
"G.R.C.X."	"1014"	8,161 gallons
"G.R.C.X."	"1763"	8,100 gallons
"G.R.C.X."	"2006"	8,146 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,588.47, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$649.83, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 3.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 32,230 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 437"	8,137 gallons
"G.R.C.X."	" 621"	8,005 gallons
"G.R.C.X."	"1039"	8,157 gallons
"G.R.C.X."	"1143"	8,371 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$711.55, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$292.18, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 4.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period

of time, to-wit: on the 7th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 23,932 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1113"	8,139 gallons
"G.R.C.X."	"1378"	8,093 gallons
"G.R.C.X."	"1621"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$528.13, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds there-

of, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$216.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 5.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 21st day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 15,930 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.
"G.R.C.X."	"1111"	8,137 gallons
"G.R.C.X."	"1619"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$351.81, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds there-

of, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$143.92, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 6.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 6,577 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "309," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 6,662 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that

on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$145.09, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$59.62, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 7.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count

as fully as if they were here repeated, during the said period of time, to-wit: on the 27th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 24,134 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 445"	8,140 gallons
"G.R.C.X."	"1080"	8,185 gallons
"G.R.C.X."	"1385"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$531.79, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nine-

teen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$218.18, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 8.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 22,970 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 422"	7,044 gallons
"G.R.C.X."	"1100"	8,134 gallons
"G.R.C.X."	"1220"	8,096 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in

the amount of \$506.90, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13 $\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19 $\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half (13 $\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.37, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 9.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 29th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 78,906 gallons, then and there contained in 10 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capaci-

ties were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 168"	7,016 gallons
"G.R.C.X."	"1054"	8,094 gallons
"G.R.C.X."	"1079"	8,147 gallons
"G.R.C.X."	"1136"	8,144 gallons
"G.R.C.X."	"1211"	8,093 gallons
"G.R.C.X."	"1232"	8,095 gallons
"G.R.C.X."	"1602"	8,023 gallons
"G.R.C.X."	"1612"	8,023 gallons
"G.R.C.X."	"1763"	8,100 gallons
"G.R.C.X."	"2016"	8,153 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,739.96, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common

carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$711.80, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 10.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the first count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 40,045 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 961"	8,056 gallons
"G.R.C.X."	"1024"	8,145 gallons
"G.R.C.X."	" 973"	8,056 gallons
"G.R.C.X."	"2006"	8,146 gallons
"G.R.C.X."	"1327"	8,096 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$882.07, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds

thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$360.84, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 11.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 32,128 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1278"	8,097 gallons
"G.R.C.X."	"1347"	8,090 gallons
"G.R.C.X."	"2025"	8,153 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$708.17 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$289.77, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 12.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 23,529 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 629"	7,604 gallons
"G.R.C.X."	"1356"	8,093 gallons
"G.R.C.X."	"1358"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$518.12 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a conces-

sion in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$211.96, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 13.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 39,005 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 328"	7,062 gallons
"G.R.C.X."	" 445"	8,140 gallons
"G.R.C.X."	"1153"	8,130 gallons
"G.R.C.X."	"1359"	8,086 gallons
"G.R.C.X."	"2008"	8,148 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refin-

ing Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$861.74 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$352.52, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 14.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 40,101 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1155"	8,130 gallons
"G.R.C.X."	"1225"	8,095 gallons
"G.R.C.X."	"2027"	8,149 gallons
"G.R.C.X."	"1243"	8,093 gallons
"G.R.C.X."	"1397"	8,099 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$883.53 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds

thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$361.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 15.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 8,068 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2013" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,148 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$177.46, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 16.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from the first day of February, 1917, to and including the 27th day of December, 1917, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Kiefer, in the State of Oklahoma, and the shipping of said gasoline from said Kiefer to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time the Midland Valley Railroad Company was a corporation organized and existing under the laws of the State of Arkansas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and

it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the law of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said respective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Kiefer, over their aforesaid through railway route, to said West Port Arthur, to be thirty-three (33) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Kiefer to said West Port Arthur, over

the aforesaid route, would be completed and imposed at the aforesaid rate of thirty-three (33) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said cars; and that the said rate of thirty-three (33) cents per one hundred pounds was the lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 17 to 35, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 30th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,999 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1462," consigned to said Gulf Refining Company: that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,093 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.26, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 3rd day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the

said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.09, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 17.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 5th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,041 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1061"	8,180 gallons
"G.R.C.X."	"1155"	8,130 gallons
"G.R.C.X."	"1607"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said

West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$529.82, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$217.40, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 18.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 19,870 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said

tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 950"	8,059 gallons
"G.R.C.X."	" 1507"	12,023 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$437.38, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$178.92, lawful money of the United States, contrary to the form of the statute in

such case made and provided and against the peace and dignity of the United States.

### COUNT 19.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,051 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company: that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1038"	8,151 gallons
"G.R.C.X."	"1206"	8,089 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$353.71, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$144.69, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 20.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,133 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 332"	7,065 gallons
"G.R.C.X."	"1029"	8,225 gallons
"G.R.C.X."	"1064"	8,144 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$510.40, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 21.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 21st day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 21,682 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 309"	6,662 gallons
"G.R.C.X."	" 332"	7,065 gallons
"G.R.C.X."	"1029"	8,225 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$478.12, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 15th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds

thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$195.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 22.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of May, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 54,968 gallons, then and there contained in 7 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 422"	7,044 gallons
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1178"	8,130 gallons
"G.R.C.X."	" 620"	8,018 gallons
"G.R.C.X."	"1083"	8,140 gallons
"G.R.C.X."	"1237"	8,099 gallons
"G.R.C.X."	"1368"	8,093 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said

West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,213.11, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$496.21, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 23.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,168 gallons, then and there contained in 2 tank cars, consigned to

said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1083"	8,140 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$355.34, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of June, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$145.36, lawful money

of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 24.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 88,972 gallons, then and there contained in 11 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1201"	8,082 gallons
"G.R.C.X."	"1206"	8,089 gallons
"G.R.C.X."	"1225"	8,095 gallons
"G.R.C.X."	"1624"	8,014 gallons
"G.R.C.X."	"1727"	8,101 gallons
"G.R.C.X."	"1852"	8,170 gallons
"G.R.C.X."	"1854"	8,176 gallons
"G.R.C.X."	"1856"	8,178 gallons
"G.R.C.X."	"1858"	8,173 gallons
"G.R.C.X."	"1950"	8,013 gallons
"G.R.C.X."	"1951"	8,011 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount

of \$1,940.63, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$793.87, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 25.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 16th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,362 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the afore-

said schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1852"	8,170 gallons
"G.R.C.X."	"1855"	8,179 gallons
"G.R.C.X."	"1947"	8,913 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$530.60, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$217.06, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 26.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 17th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,011 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1946", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,011 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$174.48, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds

thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$71.38, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 27.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 40,298 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1033"	8,173 gallons
"G.R.C.X."	"1206"	8,089 gallons
"G.R.C.X."	"1271"	8,095 gallons
"G.R.C.X."	"1706"	8,098 gallons
"G.R.C.X."	"1708"	8,101 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Re-

fining Company; that thereupon freight charges in the amount of \$883.32, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 28th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$361.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 28.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 40,185 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell ca-

pacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 924"	8,059 gallons
"G.R.C.X."	"1721"	8,101 gallons
"G.R.C.X."	"1728"	8,101 gallons
"G.R.C.X."	"1774"	8,100 gallons
"G.R.C.X."	"1798"	8,100 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$881.25, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$360.50, lawful money

of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 29.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 14th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,201 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1366"	8,093 gallons
"G.R.C.X."	"1865"	8,175 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$354.32, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well know-

ing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$144.94, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 30.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,044 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1245", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,096 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Ar-

thur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.33, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.13, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 31.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of September, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,148 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the

initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1710"	8,100 gallons
"G.R.C.X."	"1786"	8,100 gallons
"G.R.C.X."	"1978"	8,014 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$527.38, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of October, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said com-

mon carriers amounted in the aggregate to \$215.74, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 32.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,928 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1127", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,056 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$175.46, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of

the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$71.77, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 33.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,953 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1366"	8,093 gallons
"G.R.C.X."	"1774"	8,100 gallons
"G.R.C.X."	"1978"	8,014 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said

West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$527.23, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$215.68, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 34.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,899 gallons, then and there contained in 3 tank cars, consigned to

said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 610"	8,012 gallons
"G.R.C.X."	"1424"	8,090 gallons
"G.R.C.X."	"2027"	8,149 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$528.19, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{4}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from

the said common carriers amounted in the aggregate to \$216.04, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 35.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of November, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,947 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.	Full Shell
"G.P.T.X."	" 625"	8,050 gallons	
"G.P.T.X."	" 630"	8,055 gallons	

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$350.77, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well know-

ing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$143.48, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 36.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, operated connecting railway routes and were common carriers engaged in the transportation of property, including gasoline, for hire, over their connecting railway route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the railway line of said Midland Valley Railroad Company, to-wit: Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the railway line of said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port

Arthur, both in the State of Texas, and so were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That the President of the United States did, by his proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes of the three common carriers aforesaid, and did in said proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads appointed and designated by the President; that throughout the aforesaid period, from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, said railway routes and lines of transportation of the three said common carriers were controlled, operated, and utilized by the Director General of Railroads, which control, operation and utilization is herein termed Federal control, for the transportation of property, including gasoline, for hire, over the said through railway route.

IV. That throughout the period of time from January 1st, 1918, to June 1st, 1918, both dates inclusive, said three common carriers, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published, schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full) which showed that the lawfully established rate for the transportation of gasoline, in tank cars, from said Kiefer, over the aforesaid connecting through railway route, to said Port Arthur and West Port Arthur, throughout the last mentioned period, was 33 cents for each 100 pounds thereof, and said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rate of 33 cents per 100 pounds, would be computed and imposed at a weight of 6.6 pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless such full shell capacity of the tank cars was in excess of the weight carrying capacity of the trucks of such tank cars.

V. That throughout the last mentioned period The Texas Company, a corporation under the laws of the State of Texas, as consignor and consignee of shipments, was engaged in shipping gasoline, in tank cars, from said Kiefer, over the aforesaid through railway route, to said Port Arthur, and at divers times during said period did ship and cause to be shipped large quantities of gasoline, in tank cars, from said

Kiefer, over the said through railway route, to said Port Arthur, consigned to said The Texas Company, at the said lawfully established rate of 33 cents per 100 pounds, chargeable for such transportation, the dates of some of said shipments, the quantities of some of said gasoline shipped, and the cars in which some of the shipments were transported, being as follows, to-wit:

Dates of shipments.	Quantities in gallons.	Car Initials and numbers.
January 25, 1918	32,391	T.C.X. 4193
		T.C.X. 4574
		T.C.X. 3112
		T.C.X. 3012
February 16, 1918	16,335	T.C.X. 4428
		T.C.X. 2740
March 16, 1918	24,394	T.C.X. 2901
		T.C.X. 3107
		T.C.X. 1881
April 1, 1918	16,305	T.C.X. 2226
		T.C.X. 3113
April 27, 1918	40,464	T.C.X. 4691
		T.C.X. 4435
		T.C.X. 4678
		T.C.X. 3068
		T.C.X. 3058

VI. That during said period of time, to-wit: on the 25th day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 80,022 gallons, then and there contained in 10 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars, containing said gasoline, and the full shell capacities of said tank cars, as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2103"	8,084 gallons
"G.R.C.X."	"2108"	8,084 gallons
"G.R.C.X."	"2115"	8,075 gallons

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2119"	8,084 gallons
"G.R.C.X."	"2160"	8,084 gallons
"G.R.C.X."	"2172"	8,082 gallons
"G.R.C.X."	"2177"	8,085 gallons
"G.R.C.X."	"2182"	8,080 gallons
"G.R.C.X."	"2189"	8,079 gallons
"G.R.C.X."	"2198"	8,080 gallons

that on, to-wit: the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline, in said tank cars, over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and at the point last mentioned did deliver said tank cars containing said gasoline, to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,760.19, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the transportation of the said shipment of gasoline.

VII. That on, to-wit: the 21st day of February, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to thirteen and one-half (13½) cents for each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of nineteen and one-half (19½) cents for each one hundred pounds of said gasoline, which was thirteen and one-half (13½) cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received by said Gulf Refining Company amounted in the aggregate to \$720.00, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 37.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 16th day of February, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 7,921 gallons, then and there contained in 1 tank car, consigned to said Gulf Refining Company; that the initials and number of said tank car containing said gasoline, and the full shell capacity of said tank car as shown in the aforesaid schedules and tariffs, which said full shell capacity was not in excess of the weight carrying capacity of the trucks of said tank car, was as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1400"	8,093 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.27, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 11th day of March, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the afore-

said lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$72.10, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓

#### COUNT 38.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 14th day of March, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 72,702 gallons, then and there contained in 9 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full sell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1708"	8,101 gallons
"G.R.C.X."	"2106"	8,077 gallons
"G.R.C.X."	"2107"	8,080 gallons
"G.R.C.X."	"2116"	8,083 gallons
"G.R.C.X."	"2120"	8,077 gallons
"G.R.C.X."	"2149"	8,083 gallons
"G.R.C.X."	"2154"	8,078 gallons
"G.R.C.X."	"2159"	8,079 gallons
"G.R.C.X."	"2197"	8,077 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from

said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,584.18, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 13th day of April, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$648.01, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓

#### COUNT 39.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 40,309 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were

not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 401"	8,048 gallons
"G.P.T.X."	" 406"	8,045 gallons
"G.P.T.X."	" 436"	8,042 gallons
"G.P.T.X."	" 503"	8,250 gallons
"G.P.T.X."	" 554"	8,254 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$885.12, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 1st day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$362.09, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

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## COUNT 40.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 26th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 56,712 gallons, then and there contained in 7 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1250"	8,098 gallons
"G.R.C.X."	"1430"	8,095 gallons
"G.R.C.X."	"1816"	8,212 gallons
"G.R.C.X."	"1854"	8,176 gallons
"G.R.C.X."	"2123"	8,080 gallons
"G.R.C.X."	"2166"	8,078 gallons
"G.R.C.X."	"2197"	8,077 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1237.45, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the

transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$506.19, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 41.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from the first day of February, 1917, to and including the 27th day of December, 1917, the Gulf Refining Company was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Jenks, in the State of Oklahoma, and the shipping of said gasoline from said Jenks to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time Midland Valley Railroad Company was a corporation organized and existing under the laws of the State of Arkansas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort

Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the laws of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Jenks, in the County of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said respective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Jenks, over their aforesaid through railway route, to said West Port Arthur, to be thirty-nine (39) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Jenks to said West Port Arthur, over the aforesaid route, would be computed and imposed at the aforesaid rate of thirty-nine (39) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars; and that the said rate of thirty-nine (39) cents per one hundred pounds was the

lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 42 to 64, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 21st day of February, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 6,937 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "422", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 7,044 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$181.31 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19 $\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19 $\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half (19 $\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their afore-

said through route, which' said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$90.67, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 42.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 22nd day of February, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,010 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1718," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,103 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.57, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Com-

pany, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.28, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 43.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,032 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 434"	8,180 gallons
"G.R.C.X."	"1369"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and

said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.84 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.43, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 44.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 29th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company,

for transportation, a certain quantity of gasoline, to-wit: 15,989 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1321"	8,089 gallons
"G.R.C.X."	"1370"	8,088 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.40, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from

the said common carriers amounted in the aggregate to \$208.08, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 45.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,027 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1178", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,130 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, and The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$209.27, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 12th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents

of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.63, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 46.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,998 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1209", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,092 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.29, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said

Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 12th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.14, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 47.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8.034 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "434," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,180 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given

by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$210.55, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$105.28, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 48.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of May, 1917, and while

the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,992 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1229", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,086 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.13, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.06, lawful money of the United States, contrary to the form of the statute in such case

made and provided and against the peace and dignity of the United States.

#### COUNT 49.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,347 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1850"	8,175 gallons
"G.R.C.X."	"1853"	8,172 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$420.77, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$210.39, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 50.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,069 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1232"	8,095 gallons
"G.R.C.X."	"1974"	8,007 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refin-

ing Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$414.47, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.25, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 51.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,117 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1268"	8,095 gallons
"G.R.C.X."	"1270"	8,088 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.56, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers,

as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.29, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 52.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,169 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 449"	7,060 gallons
"G.R.C.X."	"1037"	8,191 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$392.56, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said com-

mon carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$196.27, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 53.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 11th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,127 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1220"	8,096 gallons
"G.R.C.X."	"1743"	8,097 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.81, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.40, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 54.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,013 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1957"	8,007 gallons
"G.R.C.X."	"1983"	8,006 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.17, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in

respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$205.87, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓

#### COUNT 55.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 21st day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,014 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1956"	8,009 gallons
"G.R.C.X."	"1959"	8,005 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said

gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.20, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 11th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.10, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 56.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for

transportation, a certain quantity of gasoline, to-wit: 8,063 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1245", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,096 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.39, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 28th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.19, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 57.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,116 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2022", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,152 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$209.83, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen

and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.89, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 58.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,065 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1729," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,098 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.44, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.22, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 59.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of September, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,155 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 600"	8,052 gallons
"G.R.C.X."	"1071"	8,136 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.68, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.32, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 60.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period

of time, to-wit: on the 2nd day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,972 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1624"	8,014 gallons
"G.R.C.X."	"1983"	8,006 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.35, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents

less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.18, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 61.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 9th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,213 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1254"	8,092 gallons
"G.R.C.X."	"1864"	8,173 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.65, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the

said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.32, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 62.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,984 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "926," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,056 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company,

said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.36, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.67, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 63.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,989 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1981," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,008 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$206.13 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property, so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.06, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 64.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 27th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,006 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.	Full Shell
"G.R.C.X."	"1265"	8,089 gallons	
"G.R.C.X."	"2022"	8,152 gallons	

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.04, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in

respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.03, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 65.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from January 1, 1918, to May 31, 1919, both dates inclusive, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of the said Midland Valley Railroad Company, to-wit: Jenks, in the County of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the line of the said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Jenks to said Port Arthur and West Port Arthur, and were subject to the Act of Congress approved February 4, 1887, entitled "An Act to regulate

commerce," and to the Acts of Congress amendatory thereof and supplementary thereto; that at 12 o'clock noon on the 28th day of December, 1917, the President of the United States of America did, by his Proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes and lines of the three common carriers aforesaid; and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads, appointed and designated by the President; that throughout the aforesaid period of time said railway routes and lines of transportation of the three common carriers aforesaid were controlled, operated and utilized by the said Director General of Railroads, which control, operation and utilization is hereinafter termed Federal control, for the transportation of property, including gasoline, for hire, over the said railway line and route from said Jenks to said Port Arthur and West Port Arthur.

III. That throughout said period of time the three common carriers aforesaid, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Jenks, over the aforesaid through railway route, to said West Port Arthur, to be thirty-nine (39) cents for each one hundred pounds thereof throughout the period from January 1, 1918, to June 24, 1918, both dates inclusive; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Jenks over the aforesaid through railway route, to said West Port Arthur, to be forty-three and one-half (43½) cents for each one hundred pounds thereof throughout the period from July 29, 1918, to May 31, 1919, both dates inclusive; that said schedules and tariffs provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rates of 39 cents and 43½ cents, respectively, would be computed and imposed at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars.

IV. That during said period of time, to-wit: on the 2nd day of January, 1918, and while the aforesaid schedules and

tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,005 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2124," consigned to the said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,084 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.08, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 24th day of January, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the schedules and tariffs published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers, under Federal control, amounted in the aggregate to \$104.03, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 66.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 11th day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,899 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.
"G.R.C.X."	"2106"	8,077 gallons
"G.R.C.X."	"2183"	8,078 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.83 at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property

was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.90, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 67.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,153 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2150"	8,074 gallons
"G.R.C.X."	"2151"	8,079 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.78, at the aforesaid lawfully

established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 2nd day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.89, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 68.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,088 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1335"	8,090 gallons
"G.R.C.X."	"1712"	8,101 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.76, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.37, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 69.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 9th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,081 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 924"	8,059 gallons
"G.R.C.X."	"2178"	8,074 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.26 at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Com-

pany from the said common carriers amounted in the aggregate to \$207.62, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 70.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,163 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2119"	8,084 gallons
"G.R.C.X."	"2171"	8,079 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.03, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 25th day of June, 1918, the said Gulf Refining Company, a corporation as aforesaid, well know-

ing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.01, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 71.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,011 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "764" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,044 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.05, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said

Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.52, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 72.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,120 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1211"	8,093
"G.R.C.X."	"1446"	8,093

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$464.70, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 25th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.30, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 73.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of October, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gas-

oline, to-wit: 16,047 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1381"	8,090 gallons
"G.R.C.X."	"1967"	8,009 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$462.20, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 17th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.20, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 74.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of November, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,124 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2110"	8,081 gallons
"G.R.C.X."	"2249"	8,062 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.47, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 30th day of November, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such prop-

erty was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.76, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 75.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,012 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1946"	8,011 gallons
"G.R.C.X."	"2245"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$461.74, at the aforesaid lawfully

established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.97 lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 76.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,925 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1930"	8,049 gallons
"G.R.C.X."	"2110"	8,081 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.10, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 21st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 77.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 23rd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,942 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2206"	8,072 gallons
"G.R.C.X."	"2230"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.50, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 1st day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Com-

pany from the said common carriers amounted in the aggregate to \$207.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 78.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of February, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,940 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2207"	8,070 gallons
"G.R.C.X."	"2240"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.44, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 15th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.75, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 79.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of February, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,827 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.
"G.P.T.X."	" 401"	8,048 gallons
"G.R.C.X."	"2155"	8,080 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from

said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.04, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 24th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.57, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 80.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of March, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,943 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight

carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2185"	8,080 gallons
"G.R.C.X."	"2223"	8,065 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.53, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of March, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.79, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 81.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the

1st day of June, 1918, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, operated connecting railway routes and were common carriers engaged in the transportation of property, including gasoline, for hire, over their connection railway routes for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the railway line of said Midland Valley Railroad Company, to-wit: Jenks, in the county of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the railway line of said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and so were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That the President of the United States did, by his proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes of the three common carriers aforesaid, and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads appointed and designated by the President; that throughout the aforesaid period, from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, said railway routes and lines of transportation of the three said common carriers were controlled, operated, and utilized by the Director General of Railroads, which control, operation and utilization is herein termed Federal control, for the transportation of property, including gasoline, for hire, over the said through railway route.

IV. That throughout the period of time from January 1st, 1918, to June 1st, 1918, both dates inclusive, said three common carriers, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published, schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full) which showed that the lawfully established rate for the

transportation of gasoline, in tank cars, from said Jenks, over the aforesaid connecting through railway route, to said Port Arthur and West Port Arthur, throughout the last mentioned period, was 39 cents for each 100 pounds thereof, and said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rate of 39 cents per 100 pounds, would be computed and imposed at a weight of 6.6 pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless such full shell capacity of the tank cars was in excess of the weight carrying capacity of the trucks of such tank cars.

V. That throughout the last mentioned period the Totem Gasoline Company, as consignor of shipments, and The Texas Company, a corporation under the laws of the State of Texas, as consignee of shipments, were engaged in shipping gasoline, in tank cars, from said Jenks, over the aforesaid through railway route, to said Port Arthur, and at divers times during said period did ship and cause to be shipped large quantities of gasoline, in tank cars, from said Jenks, over the said through railway route, to said Port Arthur, consigned to said The Texas Company, at the said lawfully established rate of 39 cents per 100 pounds chargeable for such transportsations, the date of some of said shipments, the quantities of some of said gasoline shipped, and the cars in which some of the shipments were transported, being as follows, to-wit:

Dates of shipments.	Quantities in gallons	Car Initials and Numbers.
January 19, 1918	24,355	T.C.X. 4565 T.C.X. 4589 T.C.X. 4558
February 4, 1918	8,055	T.C.X. 3104
March 7, 1918	16,350	N.O.X. 8015 T.C.X. 2690
April 27, 1918	10,671	T.C.X. 633
May 1, 1918	8,092	T.C.X. 2777

VI. That during said period of time, to-wit: on the 1st day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 7,998 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2120", consigned to said Gulf Refining Company;

that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,077 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit: the date last mentioned, pursuant to instructions given by said Gypsy Oil Company, and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline, in said tank car, over the aforesaid through railway route, in interstate commerce, from said Jenks, to said West Port Arthur, and at the point last mentioned did deliver said tank car, containing said gasoline, to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.90, at the aforesaid lawfully established rate of 39 cents for each 100 pounds thereof, became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the transportation of the said shipment of gasoline.

VII. That on, to-wit: the 24th day of January, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of the said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received by said Gulf Refining Company from the said common carriers, under Federal control, amounted in the aggregate to \$103.94, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 82.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of January, 1918,

and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15,775 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1072"	8,138 gallons
"G.R.C.X."	"1957"	8,007 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.57, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 27th day of February, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$207.68, lawful money of the United States, contrary to the form of the

statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 83.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 17th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carrier, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15.947 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.
"G.R.C.X."	"1277"	8,093 gallons
"G.R.C.X."	"1431"	8,090 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.55, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 16th day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the

transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$208.27, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 84.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 18th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15,901 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1607"	8016 gallons
"G.R.C.X."	"1979"	8015 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver

said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.64, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 16th day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$206.31, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 85.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 16,157 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capaci-

ties were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.	Full Shell
"G.R.C.X."	"2101"	8,080 gallons	
"G.R.C.X."	"2120"	8,077 gallons	

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.88, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 15th day of June, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$207.93, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 86.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the

31st day of May, 1919, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, the Gulf, Colorado and Santa Fe Railway Company, a corporation under the laws of the State of Texas, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of said The Atchison, Topeka and Santa Fe Railway Company, to-wit: Drumright, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to certain points on the line of the said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Drumright to said Port Arthur and West Port Arthur, and were subject to the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto; that at 12 o'clock noon on the 28th day of December, 1917, the President of the United States of America did, by his Proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes and lines of the three common carriers aforesaid; and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads, appointed and designated by the President; that throughout the aforesaid period of time said railway routes and lines of transportation of the three common carriers aforesaid were controlled, operated and utilized by the said Director General of Railroads, which control, operation and utilization is hereinafter termed Federal control, for the transportation of property, including gasoline, for hire, over the said railway line and route from said Drumright to said Port Arthur and West Port Arthur.

III. That throughout said period of time the three common carriers aforesaid, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published schedules and tariffs of rates and charges (which are too voluminous to be herein set

forth in full) which said schedules and tariffs of rates and charges showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from June 1, 1918, to June 24, 1918, both dates inclusive, to be forty (40) cents for each one hundred pounds thereof; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from June 25, 1918, to July 28, 1918, both dates inclusive, to be fifty (50) cents for each one hundred pounds thereof; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from July 29, 1918, to May 31, 1919, both dates inclusive, to be forty-four and one-half ( $44\frac{1}{2}$ ) cents for each one hundred pounds thereof; that said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rates of 40 cents, 50 cents, and  $44\frac{1}{2}$  cents, respectively, would be computed and imposed at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars.

IV. That during said period of time, to-wit: on the 16th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 40,329 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline and the full shell capacities of said tank cars, as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1228"	8,089 gallons
"G.R.C.X."	"1708"	8,101 gallons
"G.R.C.X."	"1726"	8,097 gallons

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1744"	8,096 gallons
"G.R.C.X."	"2199"	8,078 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, as aforesaid, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,068.17, at the aforesaid lawfully established rate of forty (40) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 13th day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of twenty and one-half ( $20\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the schedules and tariffs published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$520.75, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 87.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said para-

graphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of July, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,034, gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1116," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,090 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that there-upon freight charges in the amount of \$266.97, at the aforesaid lawfully established rate of 50 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 5th day of August, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 24½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25½ cents for each one hundred pounds thereof, which was 24½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$130.82, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 88.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 32,299 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Capacity of Tank.	Full Shell
"G.R.C.X."	"1383"	8,096	
"G.R.C.X."	"1728"	8,101	
"G.R.C.X."	"2119"	8,084	
"G.R.C.X."	"2160"	8,084	

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$950.57, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 20th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of

the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate \$416.53, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 89.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 5th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 56,409 gallons, then and there contained in 7 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1225"	8,095
"G.R.C.X."	"1455"	8,090
"G.R.C.X."	"1470"	8,098
"G.R.C.X."	"1611"	8,017
"G.R.C.X."	"2113"	8,078
"G.R.C.X."	"2170"	8,084
"G.R.C.X."	"2197"	8,077

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal con-

trol, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,660.54, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$727.63 lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 90.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 6,480 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "251," consigned to said Gulf Refining Company; that the

aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 6,510 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$191.20, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariff schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate \$83.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 91.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 4th day of October, 1918,

and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,128 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 745"	8,078
"G.R.C.X."	"2112"	8,083

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.65, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to

\$207.99, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 92.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of October, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,050 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1707," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,101 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$237.93, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of November, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port

Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104,26, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 93.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,946 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2173"	8,074
"G.R.C.X."	"2183"	8,078

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.38, at the aforesaid lawfully established rate of  $44\frac{1}{2}$  cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable

to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 18th day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Point Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.87, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 94.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,007 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2157"	8,072
"G.R.C.X."	"1976"	8,006

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company: that thereupon freight charges in the amount of \$472.21, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 22nd day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.92, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 95.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity

of gasoline, to-wit: 8,045 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2194" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,081 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$237.34 at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.84, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 96.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in

this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,895 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1762"	8,098
"G.R.C.X."	"2207"	8,070

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.86, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at time upon the aforesaid through route, which said concession

so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.08, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 97.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 7,917 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1956", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,009 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$235.22, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 1st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such prop-

erty was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.07, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 98.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 24,031 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2185"	8,080
"G.R.C.X."	"2171"	8,079
"P.G.X."	"1549"	8,029

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight

charges in the amount of \$710.40 at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$311.30, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 99.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 39,800 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1956"	8,009
"G.R.C.X."	"2172"	8,082
"G.R.C.X."	"2178"	8,074
"G.R.C.X."	"2196"	8,083
"G.R.C.X."	"2248"	8,065

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,183.99, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 21st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$518.83, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 100.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the cir-

cumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 7,963 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2209", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,065 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$236.87, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 17th day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.80, lawful money of the United States, contrary to the

form of the statute in such case made and provided and against the peace and dignity of the United States.

C. W. MILLER,  
United States Attorney.

J. STANLEY PAYNE,  
Special Assistant to United States Attorney.

A true bill:

V. L. DOWNING, Foreman.

Endorsed: No. 3716. United States District Court, Eastern District of Oklahoma, . . . . Division. The United States of America vs. Gulf Refining Company. Indictment —Violation of "The Act to Regulate Commerce," Approved February 4, 1887, as amended. 32 Stat. L. 847, 34 Stat. L. 584. A true bill, V. L. Downing, Foreman. Filed in open court Nov. 22, 1919, R. P. Harrison, Clerk U. S. District Court.

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And, to-wit, on the 8th day of December, A. D. 1919, the defendant filed its Plea in Abatement, and Motion to Quash and Set Aside, which are in words and figures as follows:

**Plea in Abatement.**

Comes now the Gulf Refining Company by James B. Diggs, its attorney, who makes this plea in its behalf and by its authority, and having heard the indictment in this cause read, and protesting that it is not guilty of the premises charged in the said indictment, for plea, nevertheless, says, that it ought not be compelled to answer the same because it says that the said pretended indictment is not, in truth and in fact, a true bill voted by the Grand Jury purporting to do so, because the said pretended indictment was not read to, or by, said Grand Jury, and said Grand Jury did not, at any time, know the contents thereof, and, consequently, said Grand Jury did not vote upon the same.

And the said Gulf Refining Company saith further that neither it nor the said James B. Diggs, its attorney, had knowledge or information touching or concerning the matters hereinbefore alleged, until the date hereof, and after the said pretended indictment was returned to this court, and that this is the first opportunity in its power to make the objection presented by this plea, all of which the said Gulf Refining Company, by its said attorney is ready to verify.

Wherefore, the said Gulf Refining Company prays that

said indictment, and each and every count therein contained, be quashed and abated.

Gulf Refining Company,

By James B. Diggs,

Its Attorney.

James B. Diggs, being first duly sworn, on oath states that he has read the foregoing plea and that the matters and facts therein stated and set out are true, as he verily believes, and that he makes this plea and affidavit for said company by its authority.

James B. Diggs.

Subscribed and sworn to before me this 8th day of December, 1919.

(Seal)

F. R. Herod, Notary Public.

My commission expires—My Commission Expires July 2nd, 1923.

Endorsed: Filed Dec. 8, 1919. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Motion to Quash and Set Aside.**

Comes now the Gulf Refining Company, by its attorneys, defendant in the above entitled cause, and moves the court to quash, set aside, vacate and hold for naught the pretended indictment found and returned in this cause against it, on the following ground:

That said indictment is not an indictment found and returned by the Grand Jury in this, that said indictment was not read to the Grand Jury before its return into this court, nor was the same read by said Grand Jury, and said Grand Jury did not know the contents thereof.

JAMES B. DIGGS,

RUSH GREENSLADE,

W. E. LIEDTKE,

Attorneys for Defendant.

Subscrib

James B. Diggs, being first duly sworn on oath says that the matters of fact in the motion are true as he verily believes.

JAMES B. DIGGS.

Subscribed and sworn to this 8th Dec. 1919. R. P. Harrison, Clerk, (Seal) By E. H. Hubbard, Deputy.

Endorsed: Filed Dec. 8, 1919. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 7th day of January, A. D. 1920, the United States filed Demurrer to Plea in Abatement, which is in words and figures as follows:

**Demurrer to Plea in Abatement.**

The United States of America, by Archibald Bonds, its attorney for the Eastern District of Oklahoma, as to the plea of the Gulf Refining Company by it last above pleaded, says that the same and the matters therein contained in manner and form as the same are pleaded and set forth are not sufficient in law to preclude the United States from prosecuting the indictment against it, the said Gulf Refining Company, and the United States is not bound by law to answer the same. And this the said Archibald Bonds is ready to verify.

Wherefore, for want of a sufficient plea in this behalf he, the said Archibald Bonds, for the United States, prays judgment and that the said indictment may be adjudged good, and the said Gulf Refining Company may further answer thereto.

**ARCHIBALD BONDS,**  
United States Attorney.

Muskogee, Oklahoma, January 7, 1920.

Endorsed: Filed Jan. 7, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 2nd day of March, A. D. 1920, the following proceedings were had in this cause, present and presiding the Honorable R. L. WILLIAMS, Judge:

**Order Sustaining Motion to Strike Plea in Abatement.**

And now on this the 2nd day of March, 1920, this cause comes on to be heard on the plea in abatement of the defendant, Gulf Refining Company, to quash, set aside and hold for naught the indictments heretofore returned against it on the ground and for the reason that the same are not the action of the grand jury in that the same had not been read by the grand jury prior to the finding and return of same into court.

The court, after considering said plea, together with argument of counsel thereon, finds that the demurrer of the United States to said plea should be taken, held and treated as an exception to the sufficiency to same and also as a motion to strike said plea, and as so treated should be sustained.

It Is Therefore Ordered, Adjudged and Decreed, the said motion of the United States as to its sufficiency & to strike said

plea should be and the same hereby is sustained and the said plea is hereby overruled and denied and the same stricken from the records of this court; to which order, judgment and decree the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

Judge of the District Court of  
the Eastern District of Oklahoma.

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#### Order Sustaining Motion to Strike Motion to Quash Indictment

Now on this the 2nd day of March, 1920, this cause comes on to be heard on the motion of the defendant, Gulf Refining Company, to quash, set aside and vacate the indictment heretofore returned in this cause.

The court, after considering said motion and the argument of counsel thereon, holds that the demurrer of the United States to such motion should be taken and held as an exception to the sufficiency of same and also as a motion to strike said motion to quash.

It Is Therefore Ordered, Adjudged and Decreed by the court that the said demurrer of the United States treated as an exception and motion to strike the motion to quash said indictment be and the same hereby is sustained. It is therefore ordered, adjudged and decreed that the motion of the Gulf Refining Company be and the same hereby is overruled, denied and stricken from the files of the court; to which judgment, action and order of the court the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

U. S. District Judge of the  
Eastern District of Oklahoma.

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And, to-wit, on the 15th day of March, A. D. 1920, the defendant filed Demurrer to the Indictment, which is in words and figures as follows:

#### Demurrer to Indictment.

Comes now the defendant, Gulf Refining Company, by its attorney, James B. Diggs, and having heard the indictment in the above entitled cause read, defends the same and demurs thereto, and assigns the following grounds of demurrer:

First: That said indictment, and each and every count thereof, fails to state facts sufficient to constitute an offense against the laws of the United States.

Second: That the matters contained in said indictment, and each and every count thereof, in the manner and form as therein stated and set out, are not sufficient in law for the United States to have or maintain its aforesaid action against this defendant, and that this defendant is not bound by law to answer the same.

Third: That said indictment, and each and every count thereof, wholly fails to state or set out facts sufficient to show it was the duty of this defendant to pay the freight rate or charges therein set out.

Fourth: That the statement in each count of said indictment, that this defendant was liable to pay said freight rates or charges is a conclusion and not a statement of fact, and that the facts on which such conclusion is based, are not set out.

Wherefore, for want of sufficient indictment, said defendant prays judgment that the United States be barred from having or maintaining the aforesaid indictment against it, and this defendant further states and assigns to the court here, the following special causes of demurrer:

To the counts numbered 36, 37, 38, 39, 40, 81, 82, 83, 84 and 85, that each of said counts is bad for duplicity in this:

(a) In that in and by each of said counts, said indictment attempts to charge this defendant with the commission of more than one separate offense, in that, each of said counts attempt to charge this defendant with knowingly accepting and receiving from a common carrier, a concession in respect of the transportation of property in interstate commerce, of the sum in said counts specified, whereby said property was transported at a rate and charge less than that lawfully established; (b) and with accepting and receiving a concession whereby a discrimination was practiced in favor of said defendant and against another corporation; all of which said defendant is ready to verify.

Wherefore, defendant prays judgment and that by the court it may be dismissed and discharged of said indictment.

Dated, Muskogee, Oklahoma, January 26, 1920.

JAMES B. DIGGS,

Attorney for Defendant,

FRANK M. SWACKER, of Counsel.

Tulsa, Oklahoma.

Endorsed: Filed Mar. 15, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And, on the same day, to-wit, the 15th day of March, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Order Overruling Demurrer.**

Now on this the 15th day of March, 1920, this cause comes on to be heard on the demurrer of the defendant, Gulf Refining Company, to the indictment heretofore returned against it, and the court after hearing and considering said demurrer, together with the argument of counsel thereon, and having taken the same under advisement, finds that said demurrer should be overruled.

It Is Therefore Ordered, Adjudged and Decreed that the said demurrer be and hereby is in all things overruled and denied; to which order, judgment and decree of the court the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

Judge of the U. S. District Court of  
the Eastern District of Oklahoma.

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And on the same day, to-wit, the 15th day of March, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Arraignment and Plea.**

Now comes the United States by the United States Attorney, and comes the defendant, Gulf Refining Company, by its attorney, Jas. B. Diggs, and on motion of the United States Attorney, it is ordered that the said defendant be arraigned upon the indictment herein. And thereupon the said defendant is duly arraigned and says for its plea that it is not guilty of the charges as contained in said indictment.

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And, to-wit, on the 10th day of April, A. D. 1920, the same being one of the days of the regular April 1920 Term of the United States District Court for the Eastern District of Oklahoma, court met pursuant to recess at Tulsa, Oklahoma. Present and presiding the Honorable R. L. WILLIAMS, Judge.

Among the proceedings had on this day is the following:

**Record of Trial, April 10, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the

Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and this cause coming on for trial, the following jurors are called by the clerk and sworn to answer questions touching their competency to serve as jurors upon the trial of this cause, and are examined, found qualified, accepted by the parties hereto, and sworn to try the issues joined herein:

W. D. Herndon, R. L. Loudermilk, W. A. Mayfield, W. L. Loftin, Ed McElderry, A. W. Murray, W. F. Featherston, Tom Baskin, James C. Bruton, Hugh Forehand, E. C. Dalquest, Count Dunaway.

And the jury is permitted to separate under instructions of the court until 2 o'clock P. M., Monday, April 12, 1920.

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And, to-wit, on the 12th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 12th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein, is called and all answer present except W. F. Featherston.

And upon agreement of the parties herein, it is ordered by the court that another juror be selected to complete the panel of said jury. And A. L. Hays is called and is sworn, examined and found qualified for service as a petit juror.

And thereupon the following jurors are called by the clerk and sworn to answer questions touching their competency to serve as jurors upon the trial of this cause, and are examined, found qualified, accepted by the parties hereto, and sworn to try the issues joined herein:

W. D. Herndon, R. L. Loudermilk, W. A. Mayfield, W. L. Loftin, Ed McElderry, A. W. Murray, Tom Baskin, J. C. Bruton, Hugh Forehand, E. C. Dalquest, Count Dunaway, A. L. Hays.

And the trial of this cause is resumed. And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 13th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 13th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 14th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 14th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 15th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 15th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 16th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 16th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 17th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 17th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. Monday.

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And, to-wit, on the 19th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 19th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker,

and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 20th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 20th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 21st day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 21st, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs, and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 10 o'clock A. M. tomorrow.

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And, to-wit, on the 22nd day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 22nd, 1920.**

Now comes the United States by A. C. Chambers, J. Stan-

ley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 10 o'clock A. M. tomorrow.

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And, to-wit, on the 23rd day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 23rd, 1920—Verdict—Motion to Set Aside Verdict—Order Overruling Motion to Set Aside Verdict.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And the jury after hearing all the evidence introduced, the argument of counsel, and the instructions of the court, retires in charge of a sworn bailiff to consider of its verdict, and afterward returns into court with its verdict, which is as follows, to-wit:

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant, Gulf Refining Company, ..... guilty, as charged in the first count of the indictment.

We further find the defendant ..... guilty, as charged in the second count of the indictment.

We further find the defendant ..... guilty as charged in the third count of the indictment.

We further find the defendant ..... guilty as charged in the fourth count of the indictment.

We further find the defendant ..... guilty as charged in the fifth count of the indictment.

We further find the defendant ..... guilty as charged in the sixth count of the indictment.

We further find the defendant ..... guilty as charged in the seventh count of the indictment.

We further find the defendant ..... guilty as charged in count eight of the indictment.

We further find the defendant ..... guilty as charged in count nine of the indictment.

We further find the defendant ..... guilty as charged in count ten of the indictment.

We further find the defendant ..... guilty as charged in count eleven of the indictment.

We further find the defendant ..... guilty as charged in count twelve of the indictment.

We further find the defendant ..... guilty as charged in count thirteen of the indictment.

We further find the defendant ..... guilty as charged in count fourteen of the indictment.

We further find the defendant ..... guilty as charged in count fifteen of the indictment.

We further find the defendant ..... guilty as charged in count sixteen of the indictment.

We further find the defendant ..... guilty as charged in count seventeen of the indictment.

We further find the defendant ..... guilty as charged in count eighteen of the indictment.

We further find the defendant ..... guilty as charged in count nineteen of the indictment.

We further find the defendant ..... guilty as charged in count twenty of the indictment.

We further find the defendant ..... guilty as charged in count twenty-one of the indictment.

We further find the defendant ..... guilty as charged in count twenty-two of the indictment.

We further find the defendant ..... guilty as charged in count twenty-three of the indictment.

We further find the defendant ..... guilty as charged in count twenty-four of the indictment.

We further find the defendant ..... guilty as charged in count twenty-five of the indictment.

We further find the defendant ..... guilty as charged in count twenty-six of the indictment.

We further find the defendant ..... guilty as charged in count twenty-seven of the indictment.

We further find the defendant ..... guilty as charged in count twenty-eight of the indictment.

We further find the defendant ..... guilty as charged in count twenty-nine of the indictment.

We further find the defendant ..... guilty as charged in count thirty of the indictment.

We further find the defendant ..... guilty as charged in count thirty-one of the indictment.

We further find the defendant ..... guilty as charged in count thirty-two of the indictment.

We further find the defendant ..... guilty as charged in count thirty-three of the indictment.

We further find the defendant ..... guilty as charged in count thirty-four of the indictment.

We further find the defendant ..... guilty as charged in count thirty-five of the indictment.

We further find the defendant ..... guilty as charged in count thirty-six of the indictment.

We further find the defendant ..... guilty as charged in count thirty-seven of the indictment.

We further find the defendant ..... guilty as charged in count thirty-eight of the indictment.

We further find the defendant ..... guilty as charged in count thirty-nine of the indictment.

We further find the defendant ..... guilty as charged in count forty of the indictment.

We further find the defendant ..... guilty as charged in count forty-one of the indictment.

We further find the defendant ..... guilty as charged in count forty-two of the indictment.

We further find the defendant ..... guilty as charged in count forty-three of the indictment.

We further find the defendant ..... guilty as charged in count forty-five of the indictment.

We further find the defendant ..... guilty as charged in count forty-six of the indictment.

We further find the defendant ..... guilty as charged in count forty-seven of the indictment.

We further find the defendant ..... guilty as charged in count forth-eight of the indictment.

We further find the defendant ..... guilty as charged in count forty-nine of the indictment.

We further find the defendant ..... guilty as charged in count fifty of the indictment.

We further find the defendant ..... guilty as charged in count fifty-one of the indictment.

We further find the defendant ..... guilty as charged in count fifty-two of the indictment.

We further find the defendant ..... guilty as charged in count fifty-three of the indictment.

We further find the defendant ..... guilty as charged in count fifty-four of the indictment.

We further find the defendant ..... guilty as charged in count fifty-five of the indictment.

We further find the defendant ..... guilty as charged in count fifty-six of the indictment.

We further find the defendant ..... guilty as charged in count fifty-seven of the indictment.

We further find the defendant ..... guilty as charged in cou~~nt~~ fifty-eight of the indictment.

We further find the defendant ..... guilty as charged in count fifty-nine of the indictment.

We further find the defendant ..... guilty as charged in count sixty of the indictment.

We further find the defendant ..... guilty as charged in count sixty-one of the indictment.

We further find the defendant ..... guilty as charged in count sixty-two of the indictment.

We further find the defendant ..... guilty as charged in count sixty-three of the indictment.

We further find the defendant ..... guilty as charged in count sixty-four of the indictment.

We further find the defendant ..... guilty as charged in count sixty-five of the indictment.

We further find the defendant ..... guilty as charged in county sixty-six of the indictment.

We further find the defendant ..... guilty as charged in count sixty-seven of the indictment.

We further find the defendant ..... guilty as charged in count sixty-eight of the indictment.

We further find the defendant ..... guilty as charged in count sixty-nine of the indictment.

We further find the defendant ..... guilty as charged in count seventy of the indictment.

We further find the defendant ..... guilty as charged in count seventy-one of the indictment.

We further find the defendant ..... guilty as charged in count seventy-two of the indictment.

We further find the defendant ..... guilty as charged in count seventy-three of the indictment.

We further find the defendant ..... guilty as charged in count seventy-four of the indictment.

We further find the defendant ..... guilty as charged in count seventy-five of the indictment.

We further find the defendant ..... guilty as charged in count seventy-six of the indictment.

We further find the defendant ..... guilty as charged in count seventy-seven of the indictment.

We further find the defendant ..... guilty as charged in count seventy-eight of the indictment.

We further find the defendant ..... guilty as charged in count seventy-nine of the indictment.

We further find the defendant ..... guilty as charged in count eighty of the indictment.

We further find the defendant ..... guilty as charged in count eighty-one of the indictment.

We further find the defendant ..... guilty as charged in count eighty-two of the indictment.

We further find the defendant ..... guilty as charged in count eighty-three of the indictment.

We further find the defendant ..... guilty as charged in count eighty-four of the indictment.

We further find the defendant ..... guilty as charged in count eighty-five of the indictment.

We further find the defendant ..... guilty as charged in count eighty-six of the indictment.

We further find the defendant ..... guilty as charged in count eighty-seven of the indictment.

We further find the defendant ..... guilty as charged in count eighty-eight of the indictment.

We further find the defendant ..... guilty as charged in count eighty-nine of the indictment.

We further find the defendant ..... guilty as charged in count ninety of the indictment.

We further find the defendant ..... guilty as charged in count ninety-one of the indictment.

We further find the defendant ..... guilty as charged in count ninety-two of the indictment.

We further find the defendant ..... guilty as charged in count ninety-three of the indictment.

We further find the defendant ..... guilty as charged in count ninety-four of the indictment.

We further find the defendant ..... guilty as charged in count ninety-five of the indictment.

We further find the defendant ..... guilty as charged in count ninety-six of the indictment.

We further find the defendant ..... guilty as charged in count ninety-seven of the indictment.

We further find the defendant ..... guilty as charged in count ninety-eight of the indictment.

We further find the defendant ..... guilty as charged in count ninety-nine of the indictment.

We further find the defendant ..... guilty as charged in count one hundred of the indictment.

W. L. LOPTIN, Foreman.

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And thereupon the defendant by its counsel moves the court to set aside said verdict as to each count of the indictment. And the court having heard said motion and being suf-

ficiently advised in the premises, orders that said motion be, and it is hereby overruled, exceptions allowed.

And on the same day, to-wit, the 23rd day of April, A. D. 1920, the defendant filed Motion for New Trial and Motion to transfer the cause to Muskogee for further proceedings, said Motion to Transfer being granted by the Court. Said Motion for New Trial, Motion to Transfer, and order granting Motion to Transfer are in words and figures as follows:

**Motion for New Trial.**

Comes now, the defendant, Gulf Refining Company, and moves the court to set aside, vacate and hold for naught, the verdict of the jury herein rendered against it on account of errors of law committed on the trial of said cause, to-wit:

First. On the ground and for the reason that the verdict of the jury so rendered against it, is contrary to law and the evidence.

Second. Because said verdict is against the evidence.

Third. Because said verdict is not reasonably supported by the evidence.

Fourth. For errors of law committed by the court on the trial of said cause, in admitting over the objection of the defendant, incompetent, irrelevant and immaterial evidence.

Fifth. For error of law committed on the trial of said cause in permitting evidence that the employees of the Gypsy Oil Company, Carter Oil Company, Smith & Chestnut Company, and Crosbie & Gillespie Company, and a large number of other companies, spoke of and referred to the products of said plants as gasoline, over the objection of said defendant.

Sixth. For error of law committed by the court on the trial of said cause in permitting the witnesses, E. J. League, Haigh and others, to testify as to the custom of the employees of casinghead producers and superintendents of plants, with which this defendant was in no wise connected, of speaking of and describing the casinghead gasoline produced at said plants, by the name of gasoline, over the objection and exception of this defendant.

Seventh. For error of law committed by the court on the trial of said cause, in permitting evidence of the fact that casinghead producers with whom this defendant was in no

wise connected, shipped and described in their shipping orders and bills of lading, the products of their casinghead gasoline plants, as gasoline, over the objection and exception of this defendant.

Eighth. For error of law committed by the court in permitting evidence to be given that casinghead producers shipped their product over routes and between points other than those named in the indictment, as gasoline, in the absence of a showing that the same was shipped under the identical or similar circumstances, or so shipped and described with the knowledge of this defendant, over the objection and exception of this defendant.

Ninth. The court committed error of law in permitting evidence of the practice of superintendents of casinghead gas plants, and the employees of such plants, as to the manner of shipping and describing the products of such plants, it appearing that said shipments were made to points other than those mentioned in the indictment and made to refineries, over the objection and exception of this defendant, for the reason that said evidence is hearsay as to this defendant, being transactions between persons with whom it was in no way connected, same not shown to be known to this defendant, and not to have been shipped under similar circumstances and conditions under which the products shipped by the Gypsy Oil Company to this defendant were shipped, and not shown to be shipped over routes and between points where there existed a tariff or rate on unrefined naptha.

Tenth. For error of law committed by the court on the trial of said cause in permitting to be introduced in evidence, to the jury, over the objection and exception of this defendant, Government's Exhibits Nos. 66, 67, 68, 69, 77, 78, 79, 86, 87, 88, 95, 98, 100 to 106, inclusive; and also Government Exhibits Nos. 110 to 117 inclusive; also Government Exhibits Nos. 135, 136 and 138; also Government Exhibits Nos. 120 to 134 inclusive; also Government Exhibits 10, 11, 12, 13 and 14, and the tabulated statement checked by witness Otey, No. . . . . . , on the ground that the same were incompetent, irrelevant and immaterial to any issues in this cause.

Eleventh. For error of law committed by the court in overruling the motion of the defendant to strike from the record the evidence that employees of casinghead gasoline plants in Oklahoma, called the product produced by them, gasoline, and the evidence of A. W. Barnhart, J. W. Freeman and other witnesses named and set out in said motion, showing the practice of the superintendents of casinghead plants, and

the employees thereof, calling the product of said plants gasoline, to which action of the court, the defendant then and there objected to and excepted.

Twelfth. For error of law committed by the court on the trial of said cause in permitting the introduction of that portion of the evidence of the government's, which was subsequently stricken out on motion of this defendant, for the reason and on the ground that the same is incompetent, irrelevant and immaterial, and the improper admission of such evidence being prejudicial to this defendant, and to the introduction of which evidence this defendant at the time objected and excepted.

Thirteenth. For error of law committed by the court on the trial of said cause in refusing defendant's motion to instruct the jury to bring in a verdict of not guilty, to which action of the court the defendant at the time excepted.

Fourteenth. For error of law committed by the court on the trial of said cause in refusing the motion of defendant to dismiss said cause on the ground of want of jurisdiction of the court to hear and determine the same, and that it appeared from the evidence in the case that there was involved the construction of the tariffs, and that such construction was necessary in order to determine whether casinghead gasoline was included within the meaning of gasoline, as such word was used in the tariffs, the determination of which question is by law vested solely in the Interstate Commerce Commission, to which action of the court the defendant then and there excepted.

Fifteenth. For error of law committed by the court on the trial of said cause in refusing to instruct the jury that a material variance between the allegations of the indictment and the evidence existed, and therefore the jury should bring in a verdict of not guilty on such account, to which action and order of the court the defendant then and there excepted.

Sixteenth. For error of law committed by the court in permitting the introduction of evidence to the effect that there were rates in force after December 28, 1917, governing the transportation of gasoline, whereas, there was no showing that such rates had been lawfully published and filed, or adopted by the Director General of Railroads, in accordance with the statute and the orders of the Interstate Commerce Commission affecting such publication, filing and adoption, to which the defendant then and there excepted.

Seventeenth. For error of law committed in the course of said trial by the attorneys for the government, consisting

in improper comment in summing up, to the effect that the United States was pecuniarily interested in the outcome of said trial, and in making improper comments upon the wealth of the defendant and in making improper comments to the effect that the defendant had violated the safe transportation regulations, notwithstanding the judicial admission of the government to the contrary; this defendant not being on trial on a charge of defrauding the United States, or of violating such safe transportation regulations, and such comment being highly prejudicial and calculated to inflame the jury, and such comment having been excepted to by the complainant.

Eighteenth. For error of law committed by the court in instructing the jury that there were lawfully established, published and filed rates governing the transportation of gasoline subsequent to December 28, 1917, the evidence showing no publication, filing or adoption thereof in the manner and form provided by law, to which the defendant was allowed to except.

Nineteenth. For error of law committed by the court in charging the jury that they could look to the rules and regulations governing the safe transportation of explosives and other dangerous articles for the purpose of determining or assisting them in determining, the meaning of the term gasoline, said regulations being no part of, and having nothing to do with the rate regulations and classification governing freight rates, to which charge of the court, the defendant was, by the court, permitted to save an exception.

Twentieth. For error of law committed by the court in its general charge to the jury, that articles shipped in Interstate Commerce, should be billed and designated by the name which it is generally called, and if such article is generally used in commerce its commercial name should be given, and that if an article generally used in commerce its commercial name should be used, that is, the name by which it is used in commerce. If the article is not an article generally used in commerce and has no commercial name, then the jury should look to its manufacture and look to those who sell and buy it, to see how it is called, the law being that tariffs named freight rates, are to be strictly construed with respect to the proper technical designation of the article.

Twenty-first. For error of law committed by the court in refusing special instructions of the defendant Nos. 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35, and 36, to which action of the court the defendant then and there did except.

Twenty-second. For error of law committed by the court in refusing to give as requested, or in substance, special instructions Nos. 2, 5, 13, 16, 18, 20, 29, 30 and 31, to which action of the court the defendant at the time did except.

JAMES B. DIGGS,  
FRANK M. SWACKER,  
R. L. BUTTS,  
JOHN E. GREEN, JR.,  
T. C. HUMPHRY,

Attorneys.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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#### **Motion to Transfer.**

Comes now, the defendant, Gulf Refining Company, and moves the Court to transfer this cause to Muskogee for further proceedings.

JAMES B. DIGGS,  
R. L. BUTTS,  
F. M. SWACKER,  
JOHN E. GREEN, JR.,  
T. C. HUMPHRY,

Attorneys for Defendant.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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#### **Order Granting Motion to Transfer.**

Now, on this, the 23rd day of April, 1920, this cause coming on for further hearing on the motion of the defendant, Gulf Refining Company, that the same be transferred to Muskogee for further proceedings, the court, after hearing and considering said motion, finds the same should be granted, and it is therefore, ordered, adjudged and decreed, that this cause be, and the same hereby is transferred to Muskogee for such further proceedings as may be had therein.

R. L. WILLIAMS, Judge.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 10th day of January, A. D. 1920, the defendant filed motion in arrest of judgment, which is in words and figures as follows:

**Motion in Arrest of Judgment.**

Comes now the defendant, Gulf Refining Company, by its attorneys, and moves the court to arrest judgment against it upon each count of the indictment upon the following grounds:

1. Because the pretended indictment herein is not a true bill voted by the grand jury in accordance with law, as set forth in defendant's motion to strike the same from the records of the court and its plea in abatement duly filed and forming part of the record herein.
2. Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.
3. Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offense with which it is charged or what it may expect to meet on the trial so as to enable it to make its defense.
4. Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.
5. Because the admissions of the plaintiff and the uncontested evidence show that there is involved a controversy as to the legal construction and application of purpose, of which character of controversy this court has no jurisdiction.

And as to Counts 36 to 40, inclusive, and 81 to 85, inclusive, because the said counts are bad for duplicity, in that each of said counts there is attempted to be charged two separate and distinct offenses.

JAMES B. DIGGS,  
FRANK M. SWACKER,  
Attorneys for Defendants.

Endorsed: Filed Jan. 10, 1921, W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And on the same day, to-wit, January 10, 1921, Journal Entry was filed, which is in words and figures as follows:

**Journal Entry: Order Overruling Motion for New Trial, Order Overruling Motion in Arrest of Judgment, and Judgment and Sentence.**

Now, on this the 10th day of January, 1921, the same being a regular juridical day of the January Term, 1921, of the District Court of the United States for the Eastern District of Oklahoma, this cause comes to be further heard on the motion of the defendant, Gulf Refining Company, for a new trial herein, and the United States being present by its attorneys, C. W. Miller, United States District Attorney of the Eastern District of Oklahoma, and J. Stanley Payne, Special Assistant to the Attorney General, and the defendant being present by James B. Diggs and Frank M. Swacker, its attorneys, the court doth proceed to hear and determine said motion. And the court, after hearing and considering the same, and being fully advised in the premises, finds that said motion should be overruled.

It Is, Therefore, Ordered, Adjudged and Decree that the said motion for new trial be, and the same hereby is in all things disallowed and overruled, to which judgment and action of the court the defendant did then and there object and except.

And thereupon, the United States, by its said attorneys, moved the court for judgment and sentence on the verdict of the jury heretofore returned in said cause, and the defendant, being asked if it had anything to say why judgment should not now be pronounced against it, presents its motion in arrest of judgment stating the grounds on which judgment should not be rendered and entered against it in said above styled cause, and the court, after hearing and considering said motion in arrest of judgment and being fully advised in the premises, finds said motion should be overruled;

It Is, Therefore, Ordered, Adjudged and Decreed that the defendant's said motion in arrest of judgment be and the same hereby is in all things disallowed and overruled, to which action, judgment and order of the court the defendant did then and there object and except, and thereupon the defendant having no more to say than it hath heretofore said as to why judg-

ment should not be pronounced against it, the court doth proceed to enter judgment and pronounce sentence on the verdict of guilty heretofore rendered by the jury in said cause; and the court after considering the same and being fully advised in the premises, finds that there is no just reason why the verdict of guilty heretofore rendered in said cause, should not be sustained and approved and judgment entered thereon.

It Is, Therefore, Ordered, Adjudged and Decreed that said verdict of guilty so rendered by the jury, as aforesaid, be in all things sustained and approved, and that judgment of guilty and sentence be now entered on the records of this court in conformity with the verdict of said jury.

It Is, Therefore, by the Court Ordered, Adjudged and Decreed that the defendant be, and it hereby is declared guilty on the ninety-nine counts in said indictment as returned by the jury as aforesaid, and the United States, stating in open court that it knows no reason why defendant should be fined and judgment entered against it for more than the minimum fine, fixed by law,

It Is, Therefore, Further Ordered, Adjudged and Decreed by the court that the defendant, Gulf Refining Company, be, and hereby is fined in the sum of One Thousand Dollars (\$1,000.00) on each of the ninety-nine counts set out and contained in said indictment, and that the United States have and recover of said defendant the aggregate sum of Ninety Nine Thousand (\$99,000.00) Dollars, the same being One Thousand (\$1,000.00) Dollars on each count in said indictment, together with the costs of this suit, for which let execution issue as provided by law, unless within ten days from this date, the defendant files with the Clerk of this Court a supersedeas bond superseding this judgment, approved by the Judge of this Court.

R. L. WILLIAMS,  
Judge of the District Court  
of the United States for the  
Eastern District of Oklahoma.

Endorsed: Filed Jan. 10, 1921, W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 10th day of January, A. D. 1921, the defendant, Gulf Pipe Line Company, filed its bill of exceptions, which is in words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF OKLAHOMA.

*UNITED STATES OF AMERICA, Plaintiff,*  
*against*

*GULF REFINING COMPANY, Defendant.*  
No. 3716. Criminal.

**Defendant's Bill of Exceptions.**

Filed January 10, 1920.

Appearances:

E. E. Gann, Esq.,  
T. G. Chambers, Esq.,  
J. S. Payne, Esq., for Plaintiff.

James B. Diggs, Esq.,  
Frank M. Swacker, Esq.,  
R. L. Batts, Esq.,  
John E. Green, Jr., Esq.,  
T. C. Humphry, Esq., for Defendant.

*Be It Remembered*, that at the . . . December . . . Term of this court, A. D. 1919, before pleading to said indictment, upon leave of court, the defendant filed a written motion, which is a part of the record in this case, for the court to strike from its record the pretended indictment herein, for that the same was not a true bill voted by the Grand Jury in accordance with law, which motion was in words as follows:

**MOTION TO QUASH AND SET ASIDE.**

Comes now the Gulf Refining Company, by its attorneys, one of the defendants in the above entitled cause, and moves the court to quash, set aside, vacate and hold for naught the pretended indictment found and returned in this cause against it, on the following ground:

That said indictment is not an indictment found and returned by the Grand Jury, in this, that said indictment was not read to the Grand Jury before its return into this court,

nor was the same read by said Grand Jury, and said Grand Jury did not know the contents thereof.

JAMES B. DIGGS,

RUSH GREENSLADE,

W. C. LIEDTKE,

*Attorneys for Defendant.*

JAMES B. DIGGS being duly sworn on oath, says that the matters of fact above set (forth) are true as he verily believes.

JAMES B. DIGGS.

Subscribed and sworn to before me this 8th day of December, 1919.

R. P. HARRISON, Clerk,

By E. H. HUBBARD, Deputy.

(Seal U. S. Dist. Court.)

Endorsed: Filed, Dec. 8, 1919, R. P. Harrison, Clerk, United States District Court.

And the foregoing verified motion was all the evidence given upon the hearing of said motion, and the statements therein contained were not denied by the plaintiff.

And the defendant asked leave to call witnesses to prove the statements therein contained, which the court refused to permit, to which the defendant then and there duly excepted.

And after hearing argument upon said motion, the court denied and overruled the same, to which the defendant then and there duly excepted.

*Be It Also Remembered* that on the trial of the above entitled cause, in this court, begun on April 10, 1920, at the March Term 1920, before the Honorable R. L. Williams, District Judge, presiding, and a jury, the following proceedings were had, to-wit:

A jury was selected satisfactory to both parties and duly sworn to try said case.

MR. J. S. PAYNE opened on behalf of the United States of America, in the course of which he made, among others, the following statements, upon which the defendant then and there moved the court to instruct the verdict of acquittal for it, which motion was by the court overruled, to which ruling the defendant then and there duly excepted:

By Mr. Payne: May it please the Court and gentlemen of the jury: The defendant in this case is charged with violating an Act of Congress originally passed in 1887 and as amended from time to time, eventually by what is known as the Elkins Act, in 1903. His Honor from the bench will instruct you at the end of the case with reference to the law as it applies to the particular facts as brought out in the evidence.

\* \* \* \* \*

Mr. Payne: Gentlemen the indictment is in one hundred counts and charges the Gulf Refining Company with accepting concessions from the lawfully established tariffs rates on shipments of gasoline from three points in Oklahoma, Kiefer, Jenks, and Drumright to Port Arthur in the State of Texas. I will read the first count in the indictment: (Reads first count).

Each of the remaining counts in the indictment allege a similar transportation and a similar concession, except that in certain of the counts it is alleged that other shippers shipped the same commodity between the same points and paid the lawful rate, so that there was a discrimination in favor of this Company and against the other companies whereby this Company got an advantage in freight rate. You will note that in the indictment the Gypsy Oil Company was the shipper and the Gulf Refining Company was the consignee. We will show that those two companies are affiliated companies and that those two companies and the Gulf Pipe Line Company are owned, that is all their capital stock, except the directors' shares, three shares, are owned by the Gulf Oil Company, the Gypsy Oil Company, Gulf Pipe Line Company and Gulf Refining Company. The Gypsy Oil Company in reality being the producing department, the Pipe Line Company pipes the crude oil from Oklahoma down to Port Arthur where the refinery of the Gulf Refining Company is located.

"Now it will be observed that the indictment charges that what was shipped was gasoline. Now as it is a common knowledge there are two kinds of gasoline. That which is usually refined as crude oil in a refinery, and the other is casinghead gasoline made by the compression of gas escaping from an oil well. Now in this case what was shipped was casinghead gasoline. This casinghead gasoline was produced by the gasoline department of the Gypsy Oil Company. They run a separate department for their gasoline and it is distinct from the producing of

crude oil. The Gypsy Oil Company operate casinghead gasoline plant at Kiefer and Jenks and Drumright. Now these casinghead gasoline plants are always located near where the oil wells are as the casinghead gas is manufactured from the gas that flows out of oil wells and this gas is brought up out of the well through a vacuum process, and it is piped to the nearby casinghead plant where it is compressed into gasoline. The gas in the oil well is really the evaporation of the gasoline contained in the crude oil and the gas is formed through natural processes and by a process of compression and refrigeration you get the gasoline out of it. The crude oil produced by the Gypsy Oil Company is sent down to Port Arthur through the pipe line. We will show that this same thing shipped by rail in tank cars was casinghead gasoline. Now the plant at Kiefer of the Gypsy Oil Company was erected in 1913, the casinghead gasoline plant, and they started shipping their gasoline principally to Port Arthur and they shipped it as gasoline and paid the gasoline rate as they should have, and it was continued to be so shipped from that time up until December 2, 1916. At that time and on that date a tariff rate on unrefined naphtha became effective from Kiefer to Port Arthur and thereafter the Gypsy Oil Company described their shipments of gasoline as unrefined naphtha for the purpose of getting the rate on unrefined naphtha, which was 19½ cents, and in that way they secured the transportation of their gasoline at a rate that was 13½ cents less than the tariff rate which the other shippers paid. The casinghead gasoline plant of the Gypsy Oil Company at Jenks was built in the early part of 1917, and the casinghead plant at Drumright was opened shortly thereafter. As I said, the only thing that is shipped from these three points in tank cars is this casinghead gasoline.

"Casinghead gasoline has become a very well known commodity. In the year 1917 there were nearly 200,000,000 gallons of it produced if I remember the figures correctly. These casinghead plants as I mention get the gasoline from the gas by the process of compression and refrigeration and the principle of it is the same *was* water is precipitated on the outside of a glass containing ice water and beads of water formed on the glass. The warm air coming in contact with the cold air causes that precipitation and in that same way they get the liquid from the gas and the liquid is gasoline. However, it is a very high gravity gasoline; it is a very high grade of gasoline too. Nearly always clear and water-white and it is likely to be

quite volatile and if allowed to stand it will evaporate very rapidly. In order to give this gasoline more body it is usually blended with refined naphtha. Now the naphtha that the Gypsy people use for blending at Kiefer and Drumright is shipped from the refinery at Port Arthur to Kiefer in tank cars. When the naphtha arrives at Kiefer and at Drumright it is put in storage tanks and there blended with the casinghead gasoline and then reshipped. The product is gasoline blending this casinghead gasoline with naphtha or kerosene and with either of them you get a gasoline. The gasoline that is shipped from Jenks is undiluted. The gas there is rather lean gas and it does not need blending at that point. Now I might say that the blending that takes place at Kiefer and Drumright is not a full blending. It is blended so that the gravity is from 74 to 78. They have to blend it down in order to ship it in tank cars because there is a rule in the classification that casinghead gasoline either undiluted or blended cannot be shipped in the ordinary tank car unless its vapor tension is ten pounds or less. That means the gas confined in a car naturally has a tension and that tension must not be more than ten pounds per inch. It cannot be shipped in ordinary tank cars but must be shipped in insulated cars. Now the tariff provides that where the vapor pressure is more than ten pounds it can be shipped only as liquefied petroleum gas, which simply means the gas of petroleum wells which has been liquefied. Now the rate on liquefied petroleum gas from Kiefer and Drumright was just as high as the rate on gasoline. The tariff also said that where the vapor pressure is less than ten pounds it might be shipped as gasoline so that in either event it had to be shipped as gasoline or liquefied petroleum gas and in either event it would take a rate as high or higher than gasoline. Now the rate on gasoline from Jenks to Port Arthur was 39 cents as was also the rate on petroleum liquid gas and also naphtha and also gasoline, each a refined petroleum product; and the rate on unrefined naphtha from Jenks to Port Arthur was 19 and one-half cents, so that as we claim by the false billings of these shipments of gasoline as unrefined naphtha they were able to get a rate that was almost half, nearly half less than they should have paid. They just cut the rate in two. The rate on refined products from Drumright was 40 cents and the rate on unrefined naphtha was 21 and one-half cents. The tariff makes those two distinctions. They have a certain rate on unrefined oils and another on refined products. So in this case the scheme was to misdescribe this refined prod-

uct as an unrefined product in order to get a lower rate. Now you will hear some testimony about the difference between gasoline and naphtha and all that, but the distinction in this case will be whether this was a refined product and whether it was an unrefined product. Casing-head gasoline is a highly refined product; it is refined by the processes of nature in the earth and when it comes to the surface it only needs to be liquefied in order to produce a pure high grade gasoline. Now where the shipments are blended as they were at Kiefer and Drumright, they are blended with a naphtha that has been refined as much as refineries can refine it. Naphtha is produced by a distillation of crude oil, put through the stills, through the agitators and through the steam stills. It is washed and given the acid treatment and produces a water colored refined liquid. Now the blending of those products together could not possibly make an unrefined product so as to take the unrefined rate. I forgot to mention that the same purpose can be secured by what they call weathering as by blending. Weathering simply means putting some of this gasoline out and letting some of the vapor escape into the atmosphere. Now gentlemen we will show that these shipments were inspected while in transit by inspectors of the bureau of explosives, men who make a business of inspecting casinghead gasoline. And they will testify—

"By the Court: Now what is the use of going into all of that detail on a statement to the jury? It looks to me like now here it is the contention of the Government that they shipped this stuff at this rate. They claim it is unrefined naphtha and you claim it ain't. Now that is all detail. Now I am going to close this case on April 24th. I have cases set on April 26th so if you are aiming to get through with it there is no use taking up time in these statements—

"By Mr. Payne: Alright this can be taken up by the witnesses.

"By the Court: They will understand it. These men won't understand what you tell them now. It is the contention of the government it was shipped at a less rate than the fixed rate, published rate and that they shipped it as unrefined naphtha when it ought not to have been shipped that way. That is the contention and that is the point to keep in mind.

"By Mr. Payne: Alright your Honor. Just one further fact I want to mention. That is the period covered by the indictment is from December 2, 1916, and as every-

one knows that the railroads were under the Government control and the full government rate was due to the Government and the transportation of these shipments at an essentially lower rate than the legally applicable tariff rate was taking money out of the Federal Treasury and a very large sum of it. Thank you, Your Honor.

"By the Court: Proceed with the defense.

"By Mr. Diggs: If the Court please the defendant moves the Court to instruct the jury to bring in a verdict in favor of the defendant on the statement of the counsel for the Government.

"By the Court: I will overrule the motion.

"By Mr. Diggs: To the overruling of the motion defendant excepts."

Thereupon the plaintiff dismissed the Count Numbered 44 of the indictment.

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And thereupon Mr. DIGGS opened for the defense.

And thereafter, the following further proceedings were had:

Mr. Payne: Your Honor, at this time I wish to offer the stipulation between counsel.

Judge Williams: Call your first witness, let's get the witnesses sworn.

Mr. Payne: We have excused a great many until tomorrow morning—we can call all that are here.

By the Court: Very well, go ahead.

Mr. Payne: Shall I read this, Your Honor?

By the Court: Yes, proceed.

Mr. Payne: United States of America,—

Mr. Diggs: What stipulation are you offering?

Mr. Payne: The stipulation you signed. We offer this as plaintiff's Exhibit 1.

Mr. Diggs: If the court please, we admit the facts stated in the stipulation, but object to it going to the jury on the grounds it is incompetent and immaterial, and object especially as to Paragraph 2.

The Court: I will admit this subject to objection. I suppose it is their contention that they will connect this and make it competent, so I will admit it subject to your objection, and before the case is closed then I will pass

on your objection. You can just consider it read. That is technical evidence and that may be filed and considered read to the jury.

The Court: You had better call the witnesses because the rule may be invoked in this case. Call all the witnesses that are here in the court room. Proceed.

(All witnesses for the Government were asked to stand up and about forty stood up.)

The Court: All the witnesses will remain out of the court room but within call.

Mr. Diggs: Now your honor we suppose the rule would not include witnesses who are expert witnesses.

Mr. Payne: We will agree that the expert witnesses may remain in the court room.

The Court: All the defendant's witnesses may retire outside and in the morning you may bring a list of your witnesses up and I will pass on them then.

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Thereupon J. M. SCOTT, being called as a witness on behalf of the United States and being duly sworn and examined testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your position please?

A. I am inspector for the Bureau of Explosives.

Q. As inspector for the Bureau of Explosives, Mr. Scott, what are your duties?

A. To inspect the manufacture and shipping of explosives and other dangerous articles, such articles as inflammable articles and gases.

Q. How long have you been an inspector of the Bureau of Explosives? A. Since October 23, 1907.

Q. And you still hold that position? A. Yes, sir.

Q. During that period of nearly thirteen years have you had occasion to inspect shipments of casinghead gasoline?

A. Yes, sir.

Q. Have you inspected many of such shipments?

A. Quite a good many, sir.

Q. Can you state about how many?

A. Do you have reference to tank car shipments?

Q. Yes. A. Three or four hundred.

Q. Mr. Scott, can you tell casinghead gasoline by a mere examination of it?

Mr. Swacker: We object, it is irrelevant and immaterial, whether this witness can tell it or not.

Mr. Diggs: It is incompetent, irrelevant and immaterial, and the knowledge of the witness as to the two characters of gasoline has not been shown.

The Court: I would like to hear brought out the further predicate as to the qualifications.

Q. You may answer the question?

A. If I can tell casinghead gasoline?

Q. Yes. A. Unblended or blended?

Q. Either, take unblended first? A. Yes, sir.

The Court: What do you mean by unblended gasoline?

A. What the producers call high stuff; that is not blended with the lower material.

The Court: What do you mean by a lower material?

A. Such material as some refined products, as frequently used, coal oil, naphtha.

The Court: You call that—well, go head, proceed in your own way of examining him.

Q. How can you tell, Mr. Scott, whether a particular car of which you have not seen the billing is undiluted casinghead gasoline or not. A. By the vapor tension.

Q. What are the characteristics of casinghead gasoline in reference to vapor tension?

A. The vapor tension is higher.

Mr. Diggs: We object as incompetent, irrelevant and immaterial, and the competency of the witness as an expert has not been shown.

The Court: What position do you hold?

A. Inspector for the Bureau of Explosives.

The Court: How long have you been inspector?

A. Since October 23, 1907.

The Court: 1907?

A. Yes, sir.

The Court: Now what qualifications did you have to fit you for that place; what experience did you have to fit you for that place?

A. I was accepted by the Chief Inspector as being competent to fill the position.

The Court: Well, what training did you have to fit you for that?

Mr. Payne: May I interrupt Your Honor? We are not qualifying Mr. Scott as an expert, but a witness to express opinions on facts. Here is a man that deals with these things all along.

The Court: I don't see how he could unless he understood it.

Mr. Payne: I was trying to bring out that he can tell from an examination of it whether it is casinghead gasoline, because casinghead has certain characteristics different from other oils.

The Court: Well, if he knows from his experience as a physical fact, he can look at casinghead gasoline and tell it from other kinds, just like a man could go and say this is a red horse and this is a white horse, he can say that.

Mr. Diggs: That is not the question, Your Honor.

Mr. Payne: I am qualifying him, if he can tell?

The Court: I will not permit him to testify that. I will permit him to testify he has examined that car and tell what it was, if he knows. Now if you are going into the domain, the characteristics and so on you will have to show he is an expert, and you admit he is not an expert.

Mr. Payne: He can tell by a good many different things, the smell and vapor tension, and other tests.

The Court: No, you have admitted he is not an expert. I will sustain the objection.

Mr. Payne: Your Honor, I want to suggest we are qualifying him as a man in this business.

The Court: No, you have admitted he is not an expert, and unless you can show me some authority that a man that is a non-expert, that he can testify as to characteristics of matters where it takes expert knowledge, I will hear you.

Mr. Payne: That is the physical characteristics, Your Honor.

The Court: Now you may prove that by experts.

Mr. Payne: I don't like to make this statement in front of the jury, but I want to bring out by this witness that he has been at the plant at Kiefer and knows it is a casinghead plant, and they haven't any machinery down there to produce anything else.

The Court: Well that is not what you tried to prove by him at all. If you want to show that you may open up that field.

Mr. Diggs: We don't deny this is a casinghead gasoline plant and this is the only kind of stuff we produce there.

The Court: Very well, let him go ahead and offer what you want to prove by him, the physical facts and I will pass on that.

Q. Mr. Scott, have you been to the plant of the Gypsy Oil Company, gasoline department, at Kiefer, Oklahoma?

A. Yes, sir.

Q. When was your first visit there, Mr. Scott, when was the first time that you saw the plant, that plant at Kiefer?

A. Approximately in the—

Judge Williams: About when?

A. About the summer I think of 1916.

Q. Have you been there since. A. Yes, sir.

Q. Now what did you do there when you went there in the summer of 1916?

A. We went through the plant with the superintendent.

Mr. Diggs: We object as incompetent, irrelevant and immaterial.

By the Court: I suppose you want to find out what he saw when he went there?

Mr. Payne: Yes, sir.

The Court: Now what did you see when you went there?

A. I saw the plant.

Q. What kind of a plant is it?

A. Casinghead gasoline plant.

Q. Of what type, whether compression or absorption?

A. Compression of casinghead gasoline.

Q. Did you see some of the gasoline that was produced there? A. Yes, sir.

Q. What was its nature? What was it? What was the product of that plant?

A. Known as casinghead gasoline.

Q. Does the Gypsy Oil Company at Kiefer have stills of any kind whereby crude oil is refined?

A. Never saw any!

The Court: Well you know whether they were there or not. Did you make investigations enough.

A. I went entirely over the plant and did not find any stills.

Mr. Diggs: If the Court please, in order to save time we have said that we admit this is a compression casinghead gasoline plant.

Mr. Payne: Do you also admit that it is not unrefined naphtha?

Mr. Diggs: No, sir. All these plants described in the indictments are compression plants. They are casing-head gasoline plants.

The Court: Go ahead.

Q. When were you there next, Mr. Scott?

A. Sometimes in the spring or summer of 1917, I think.

Q. Did you go through the plant at that time, did you make any inspection? A. Yes, sir.

Q. And you found them producing the same thing?

A. Yes, sir.

Q. And did you find them producing the same thing?

A. Yes, sir.

Q. When were you next there, the approximate date?

A. May, I think I can call the exact date, May 11th, 1918.

Q. When were you next there? A. December, 1919.

Q. Was that the last visit?

A. That was the last time I was there.

By the Court: It looks to me like under the admission of the defendant the issues are very simple, they claim they just that casinghead gasoline is unrefined naphtha. That is the way I understand it, that seems to be the issue in the case.

By Mr. Payne: We will show and I think we will be compelled under the issue to show that casinghead gasoline is not an unrefined product.

By the Court: That is true but they say it is unrefined naphtha why not direct your evidence to that. They don't deny the shipments. I noticed they did not deny the shipments alleged in the indictment. They don't deny when it was shipped.

By Mr. Payne: They don't admit it.

By the Court: For the purposes when they come in here and take the attitude here shown they admit.

By Mr. Payne: They admit it is a corporation but not the shipments.

By the Court: Under the theory of their statement to the just it operates practically as an admission that they made the shipments but they claim they are not in violation of the law. That is the way I understand the case.

By Mr. Payne: If that is the admission that is going to be made why not put it down formally in writing.

By the Court: These statements are in the record and they are bound by the statements of counsel what they say. What I understand counsel to say is they do not deny but they admit those shipments.

By Mr. Payne: They admit they had the casinghead gasoline plant but I do not recall any reference to any shipment.

By the Court: I will take care of that. I will take care of the record on that. My understanding is the contention is that when they ship the casinghead gasoline as unrefined naphtha they shipped it as unrefined naphtha and that is in accordance with the tariff sheet. Is that correct?

By Mr. Diggs: Yes, sir.

By Mr. Payne: It will be necessary for us to show it is not an unrefined naphtha.

By the Court: That looks to me like that is all there is in the case.

By Mr. Payne: That is the heart of the case.

By the Court: That is all of it under their admission I will put in the record that under their admission made in open court that is the only issue in the case and you can direct your evidence to that.

Q. Mr. Scott, was there any change in the method of doing business in the plant from the time you went there first in May, 1916, and until the time you were there last in December, 1919?

By Mr. Swacker: I object as being incompetent, irrelevant and immaterial as to December, 1919—about that date it is without the issue in the indictment, the last transaction alleged in the indictment is May 31st, 1919, March 18th, in fact.

By the Court: I will not let them prove that.

By Mr. Payne: He was there at that time and I want to show there was no change in the plant during the period he was there, no change in the last time that he was there and the last time stated in the indictment.

By Mr. Swacker: There were a great many changes, if we have to go into that—

By the Court: Now it seems to me like to me under the admissions—they admit they made the shipments as alleged, they say, they shipped this casinghead gasoline as unrefined naphtha and that it is unrefined naphtha as

the term is used in the rate sheet. Now you can level your proof to show that it is not unrefined naphtha.

By Mr. Payne: Your Honor, we are attempting now to show that they haven't the machinery or appliances there whereby they can produce unrefined naphtha.

By the Court: Why that is immaterial. They admit they didn't make anything. They had casinghead gasoline.

By Mr. Payne: Is that the admission?

By Mr. Swacker: There is no pretense we do anything to unrefine it—machinery would involve refining it.

By the Court: You take it out of oil as I understand.

By Mr. Payne: Take it from the gas.

By the Court: From the gas?

By Mr. Payne: Yes.

By the Court: I think it is part of the oil.

By Mr. Payne: As it comes out of the well it is a gas. Now the crude oil is piped away to Port Arthur.

By the Court: This casinghead comes out of oil wells.

By Mr. Payne: It surely originates in the bowels of the earth, when it comes to the surface it is in the shape of gas and that is compressed and liquefied.

By the Court: Now the thing to do is to show that that is not unrefined naphtha.

By Mr. Swacker: We don't dispute, we have nothing there but a casinghead plant and our contention is that they cannot prove it is a product which has been unrefined. We wouldn't have any object in unrefining it of course.

By Mr. Payne: We want to show—

By Mr. Swacker: We concede we have nothing there but a casinghead plant.

By Mr. Payne: Of course, we have lots of evidence to prove it. We will show that naphtha and unrefined naphtha as those terms are used in the tariff and in the trade generally are produced by the distillation of crude oil in stills and that they have no stills at Kiefer.

By the Court: I understand they admit they have no stills there.

By Mr. Swacker: Certainly.

By Mr. Payne: In view of the admission the witness is excused.

• (Witness excused)

By the Court: Very well, call your next witness.

By Mr. Swacker: Our contention is we take it to Port Arthur for the purpose of refining it or finishing it.

By Mr. Payne: That is argument, that will come later?

Whereupon, J. H. RIEDEMAN, produced, sworn and examined as a witness, on behalf of the United States, testified as follows:

*Direct Examination of Mr. Riedeman by Mr. Payne.*

Q. Mr. Riedeman, were you ever employed by the Gypsy Oil Company, gasoline department at Kiefer? A. I was.

Q. What were the dates of your employment there?

A. I went to work for the Gypsy in September, 1916, and quit in September, 1918, as near as I remember.

By Mr. Payne: May it please the court in view of the refusal of the defendant to stipulate that the shipments were transported we feel that it is necessary to prove it unless the defendants intend to admit it.

By the Court: Let me have the indictment. Now they admit that the scheduled rates were fixed as alleged in the indictment.

By Mr. Swacker: There is a technical objection we will make when that evidence is offered. Is this unrefined naphtha or not? If the proof is confined to that order there will be no controversy about the transportation.

By the Court: Of course, they have to go on their theory. Do you admit these shipments were made as alleged?

By Mr. Swacker: Yes, sir.

By Mr. Diggs: No, sir, not as alleged, but we will admit the cars mentioned in the indictment were shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and places mentioned.

By the Court: Is that satisfactory?

By Mr. Diggs: They allege that we did it fraudulently.

By the Court: I am talking about the physical facts.

By Mr. Diggs: Yes, the physical fact of shipment.

By Mr. Payne: That is satisfactory.

By the Court: Very well.

By Mr. Payne: May I make this suggestion that the

defendants know as well as the Government does the facts necessary to prove, that is every fact in the indictment. Now it would conserve the time of the court if they would now state everything that they are going to admit.

By the Court: You state what you want them to admit and I will see if they will admit it or not.

By Mr. Diggs: We object to this in the presence of the jury.

By the Court: I will instruct the jury. This is merely for the purpose of conserving the time of the court. If the defendant wouldn't admit that that would be no evidence against them at all.

By Mr. Diggs: That is alright.

By Mr. Payne: Except it would conserve the time of the court at the expense of the Government.

By the Court: Now what facts do you say could be shortened?

By Mr. Payne: The facts set out in paragraph 3.

By the Court: What is that?

By Mr. Payne: Of the indictment with reference to the rates. The rates were on file with the interstate commerce commission as alleged in the indictment and that the minimum weight—

By the Court: That—can that be agreed to.

By Mr. Diggs: No, sir, if the court please.

By the Court: What is the point on that so they can direct their proof to that.

By Mr. Diggs: We contend that during this period of time that this rate was not in force at all that this rate did not govern.

By the Court: Of course you will have to prove that, that is the issue. What else do you want?

By Mr. Payne:

Q. Mr. Riedeman, was the practice of the Gypsy Oil Company Gasoline Department, while you were there and employed, to blend the casinghead gasoline with naphtha?

A. It was.

Q. What was the color and gravity of the naphtha with which the casinghead gasoline was blended? A. Why—

By Mr. Diggs: I object, incompetent, irrelevant and immaterial and for the further reason it is not shown the witness knows.

By the Court: You just assume he was qualified: you will have to qualify the witness.

By Mr. Payne: If he has not seen any, he cannot testify as to what the color is. I will arrange that—

By Mr. Payne:

Q. Upon an arrival of a shipment of naphtha—

By the Court: What experience have you had in observing naphtha when dealing with it, what is your experience? The objection is that no foundation is laid for this witness to testify.

Q. What was your position, Mr. Riedeman, when you were employed by the Gypsy Company at Kiefer?

A. At the time I had charge of the naphtha and of gasoline shipments.

Q. Did you see the naphtha as you unloaded it?

A. Yes, sir.

Q. What was the color of all that you ever saw?

A. It was a clear color.

Q. Did you make tests as to the color and gravity?

A. Made gravity and color tests.

Q. Of all that naphtha that you ever tested as to its gravity what was about the gravity of the naphtha?

A. Around 54 gravity.

By the Court: What is the point as to the test as to specific gravity, what is the reason for that question I would like to keep up with this myself.

By Mr. Payne: We will show the naphtha with which the casinghead gasoline was blended was a refined naphtha or clear water color.

By the Court: Gravity, what does that have to do with it?

By Mr. Payne: The gravity indicates as to its weight whether it is heavy or light. It has something to do with the question of whether or not it is refined.

By the Court: Where did they bring this casing-head gas from?

A. Casinghead?

By the Court: Yes, sir, gasoline.

A. It was made at the gasoline plant where I worked.

By the Court: How did they make it?

A. By compression. Compression process.

By the Court: You say compression. The jury don't

know what compression process is, you will have to explain that. Explain to the jury what you mean.

A. The gases are pumped in from the field, causing head gases from the well are pumped into the plant from the field.

By the Court: Where do they get the casinghead gas from?

A. Out of the oil wells. The gases from the oil wells.

By the Court: Comes out separately or with the oil?

A. Separately.

By the Court: Separately from the well?

A. Separated from the oil.

By the Court: How do they manage to bring it up separately?

A. Put tubing in the well.

The Court: They [illegible] separate it?

A. It could be drawn off separate through a casing, yes, sir.

The Court: Now they pump that into the plant?

A. Yes, sir.

The Court: Pump in the casinghead gas?

A. Yes, sir.

The Court: Now suppose they didn't have the casing separate, would it all come up together?

A. It would come up with the oil then.

The Court: So the casing is fixed so that they cut that off, the gas from the oil?

A. Well, yes; it is not mixed with the oil at all when it comes out of the well.

The Court: Go ahead.

Q. Mr. Riedeman, were the cars in which the naphtha was brought to Kiefer clean cars or dirty cars?

A. They were clean cars.

Q. What kind of cars as to clean or dirty cars did you ship out the blend in?

A. As a rule shipped the same cars back that we received the naphtha in.

Q. Suppose a dirty car came in?

A. We would have it cleaned.

Q. Had it cleaned before you shipped out a blend in it?

A. Yes, sir.

The Court: Now let me see; now you got this casinghead gas piped in from the field, and then by com-

pression out of the gas you get the casinghead gasoline. Now you say you blended that with naphtha. What do you mean by naphtha?

A. That was the product we received from Port Arthur; it is a heavier product than the gasoline, about 54 gravity, and we blend this high grade liquid casinghead gasoline with this to lower the gravity of the casinghead gasoline.

The Court: Now you talk about these cars were cleaned, you mean the cars that brought the naphtha in from Port Arthur here?

A. Yes, sir.

The Court: Now you mean after you blended it you shipped it back to Port Arthur?

A. Yes, sir.

The Court: Now where did they get that stuff they call naphtha, where did that come from?

A. From the refinery at Port Arthur.

The Court: How did they make that?

A. That is made from crude oil. By refining crude oil. That is one of the parts that come off.

The Court: Go ahead.

Q. Mr. Riedeman, I show you a number of shipping orders covering shipments billed as gasoline from Kiefer, Oklahoma, shipped by the Gypsy Oil Company, Gasoline Department, during the month of November, 1916, consigned to the Gulf Refining Company, Port Arthur, Texas, and I will ask you to examine these shipping orders and say whether they were signed by you?

Mr. Diggs: We object as incompetent, irrelevant and immaterial, because they are shipments covering dates before which the unrefined naptha rate went into force and effect, and before the date of any shipment mentioned in the indictment. And we further object, if the court please, to the attorney for the United States stating what the papers are before he gives them to his witness. The proper practice, as we understand it, is for the paper to be handed to the witness and if he is allowed to talk, for him to state what it is.

The Court: Now there is one way I think that would be competent. Now let me see those orders. (Mr. Payne handed papers to the court.) I will let you ask him, I will permit you to ask him how he billed these cars out at the time alleged there, then if he tells you how he billed them out, unrefined naphtha, I will permit you to ask him why

he did that; then it may be competent to ask him if just immediately prior to this he billed it out as gasoline and get his explanation for that. I want permit this at this time.

Mr. Payne: All right.

Q. Mr. Reideman, I show you a batch of shipping orders covering shipments of unrefined naptha from Kiefer, Oklahoma, shipped by the Gypsy Oil Company, Gasoline Department?

Mr. Diggs: If the court please, we insist that he show them to the witness and ask them what they are.

Mr. Payne: In that event the record won't show what they are.

The Court: We will get the record by asking him what they are. Say, I show you certain orders, what are they?

Q. Tell the court and jury—

The Court: No, just give me that now. (Mr. Payne hands papers to the court.) I show you certain orders here, dated, the first one dated Kiefer, Oklahoma, December 17, 1916, the last one Jenks, Oklahoma, January 1, 1918, and ask that they be identified by the stenographer as proper exhibits, and then they will be identified, and then you may ask him what they are.

By the Court: You want to put those orders in the record.

By Mr. Payne: I want to show—

By the Court: You want to put them in the record?

By Mr. Payne: Yes, sir.

By the Court: Let them be identified as Government's Exhibits 2, 3, and 4, etc., and refer to them as Government's Exhibits 2, 3 and 4 and so on.

By Mr. Payne: I offer this as Government's Exhibit 2 for identification.

Q. Referring to Government's Exhibit 2 I will ask you to state what those orders are?

By the Court: Now what does the exhibit contain. What does the exhibit contain?

A. Contains the shipping orders of shipments of unrefined naptha from Kiefer, Oklahoma, to Port Arthur, Texas, from the Gypsy Oil Company, gasoline department, of Kiefer to the Gulf Refining Company of Port Arthur.

By Mr. Diggs: I object, incompetent, irrelevant and

immaterial and not shown to have been made by the authority of the Gulf Refining Company or the Gypsy Oil Company or any of its officers. I am making this objection because the gentleman does not do us the courtesy of showing us what he is offering so we may know what it is.

By Mr. Payne: Mr. Diggs, you can see anything we have. You have seen it and you know what they are.

By the Court: Now just a minute, gentlemen, who made those orders?

A. I did.

By the Court: Who wrote the orders, you wrote the orders?

A. Yes, sir.

By the Court: In what position were you acting then for the Gypsy Oil Company if you were acting in any?

A. Shipping clerk I guess you would call that.

By the Court: When you made your orders were you acting under anybody's direction?

A. Mr. Millard, the superintendent.

By the Court: Now then you can show them to counsel and give them an opportunity to object. You are ready to introduce them now if you want to introduce them.

By Mr. Payne: I have not offered them yet.

The Court: Now I would suggest when you have these exhibits show them to counsel by the other side and they can be examining them.

Mr. Diggs: No objection.

The Court: Proceed.

Mr. Payne: I offer Exhibit No. 2 in evidence.

The Court: Very well, it is admitted, no objection.

Q. Now you say you wrote on there "Unrefined Naphtha." How come you to write unrefined naphtha?

A. I was instructed by the plant superintendent Mr. Millard.

Q. Mr. Readerman, how were the bills just prior to the time that the change was made—

The Court: When is the first one there?

Mr. Payne: December 17, 1916.

The Court: Where is that that you offered? Let me see that. Now I will permit you to ask him this ques-

tion—if he ever consigned any of that identical commodity under any other name and if so, when and where; let you show him that to refresh his memory, then let him give his reasons if any.

Mr. Swacker: Is that limited to Port Arthur?

The Court: Yes, on this question that is limited to Port Arthur.

Mr. Payne: The gentlemen needn't anticipate anything.

Q. Referring to Government Exhibit No. 2, Mr. Reademan, I will ask you if the same commodity as was shipped in the cars mentioned in those orders was ever previously shipped under any other description.

Mr. Diggs: If the court please, we admit we shipped it at the unrefined naphtha rate.

The Court: I will let him ask it. You answer that question.

A. As far as I know it was the same product.

*By the Court.*

Q. You know whether it was? A. Yes, sir.

Q. The same product?

A. Yes, sir. There was no difference in the gravities that I remember of.

Q. It is your best recollection it was the same?

A. *Ar und*

Q. What is your best recollection as to it being the same?

A. It was the same.

Q. The same? A. The same.

Q. Well, now do you know of any reason why just prior to that time you shipped it as gasoline?

A. I had instructions to bill it as gasoline when I went to work for these people.

Q. But then beginning there with those orders (Exhibit 2), instructions, you were to bill it as—

A. Unrefined napatha.

Q. But prior to that time your instructions were to bill it as gasoline? A. Yes, sir.

Q. And you don't know why the change was made?

A. No, sir.

Q. Very well that is as far as you can go.

By Mr. Payne: I offer ten papers and ask they be marked Government's Exhibit 3 for identification.

By the Court: Identified as an entire Exhibit Govt. No. 3.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, the shipments having been made before the *tarrif rate*—

By the Court: I will not permit you to go into that this witness testified the shipment and all shipments made prior to those—

By Mr. Swacker: December 2nd.

By the Court: As shown in Exhibit 2 shipments of this identical commodity according to his best recollection were made, were billed out as gasoline. You have got that in so I will not permit you to put these in the record, I will not permit them to be introduced, in the record, he has already testified.

By Mr. Swacker: We interpose an objection to the testimony on the ground of irrelevancy.

By the Court: Very well I will permit that, these prior shipments made under the direction of the same superintendent, Mr. Mallard?

A. Yes, sir.

By the Court: I will permit that to show the conduct of their business.

By Mr. Swacker: If your honor understands the basis of our objection we don't deny—

By the Court: That comes afterwards as a matter of explanation.

By Mr. Swacker: But we deny the revelaney. This is attempting to show a rule or course of conduct in respect to other things than those alleged in the indictment and we say any explanation of such course of conduct must be negatived at this time and for that reason it is incompetent, irrelevant and immaterial.

By the Court: I will permit it for this reason, the Government says this was gasoline and not unrefined naphtha. That is their contention now the shipments from the same points by the same concern that conducted the business, that is the circumstance for the jury to consider in weighing the evidence. This was prior to a certain date that they shipped it as gasoline. Now they may of course, I am assuming the explanation that will be admitted on the part of the name used by the defense they could have called it either name and for certain reason and for their convenience they used either name. I will instruct the jury not to make up your minds on any part of the evidence; that when you hear the evidence in this case you always keep your minds open remember-

ing all of the evidence as near as you can and keep your minds open and hear the last part of the evidence and then keep your mind open and not make up your mind until you have heard the argument and the instructions of the court.

By Mr. Diggs: We want to get in an exception. We object to the introduction of the evidence as incompetent, irrelevant and immaterial.

By Mr. Payne: What evidence.

By Mr. Diggs: The answer of the witness the court permitted him to answer. And for the further reason the Government states that it is for the purpose of proving a course of conduct and the fact surrounding the different shipments not being shown to be identified and similar in the material respects of the rate and for the further reason that at the time the ten papers in Exhibit 2 mentioned the only rate in existence by which it could be shipped was the classification of gasoline as shown by the tariff.

By the Court: Now on these shipments that are referred to originated at the same point Kiefer and brought the same rate to Port Arthur.

A. Yes, sir.

By the Court: And was the same material--same commodity according to your best recollection?

A. Yes, sir.

By the Court: And shipped for the same purpose.

A. Yes, sir.

By the Court: Very well you may have your exception.

By Mr. Payne: May it please the court, written evidence of this sort is so much more satisfactory than verbal evidence won't you let me put this one in.

By the Court: No, I have ruled on that.

By Mr. Payne: May we bring it up later.

By the Court: Well, if you have any authorities on it. It is not based on these shipments. This other is collateral; this other evidence is collateral evidence.

By Mr. Payne: Here is the point, Judge, that we have already brought in evidence which shows that they have been shipping the same thing all the time. Now our indictment begins on December 2nd. Now we, it seems to me, should be allowed to show what happened just prior to that in order to show the nature of the commodity.

By the Court: The evidence is that it is the same commodity and that prior to that time they billed it out under different names and what else do you want except to incumber the record and I have excluded it on that ground.

By Mr. Payne: Alright. That is all for this witness.

By the Court: Now you don't object to it on the ground that he cannot testify as to the course—he cannot testify as to the ears because it is shown in writing.

By Mr. Diggs: No.

By Mr. Swacker: Circumstances are not shown to be identical.

By Mr. Diggs: Our objection goes—

By the Court: It is not competent for any purpose whether proved by parole or in writing.

By Mr. Diggs: Yes, sir.

By Mr. Payne: May I state that the tariff don't change the nature of the commodity.

By the Court: That is a matter that might come up later. Proceed.

*Cross Examination of Mr. Riedeman by Mr. Diggs.*

Q. What did you say your name was? A. Riedeman.

Q. I believe I understood you to say you did not know why this commodity was shipped at one time as unrefined napatha and other times gasoline? A. I didn't.

Q. It is a fact, however, Mr. Riedeman, that the product that was shipped as gasoline was so shipped prior to the time that the part named unrefined gasoline was shipped?

A. Yes, sir, that is to Port Arthur.

Q. And after you were directed to ship it as unrefined napatha no other shipments to the same destination, to Port Arthur were shipped as gasoline?

A. No, sir, not to my recollection, no, sir.

Q. Now, you say, Mr. Riedeman, as I understand you that this was the stuff that came up that you knew about it; do you know what the stuff was other than taking the gravity—what you call napatha that came up from Port Arthur, do you yourself know anything of the nature of that article?

A. I can't state that I do except it is heavier.

Q. You know it is heavier because you took the gravity test? A. Yes, sir.

Q. In this article called casinghead gasoline do you know what the gravity of that is before it is mixed with what you call the napatha from Port Arthur?

A. The gasoline at Kiefer was around 85 gravity as well as I remember.

Q. Do you know anything about the difference in the nature of the article before it was blended with the naptha from Fort Worth than it was after the blending?

By the Court: You mean Port Arthur.

By Mr. Diggs: Port Arthur I should say.

A. Before it was blended?

Q. Yes, what difference did it make in the casinghead gasoline? A. Lowered the gravity.

Q. Do you know what, if any, what effect that would have of it as to making it a finished or unfinished product?

A. Well, I can't say that I do.

Q. Do you know why, for what purpose the shipments were made to Port Arthur what the purpose of shipping it was?

By the Court: That is if he knows of his own knowledge.

A. Of my own knowledge, no, I couldn't say.

Q. You don't know?

By Mr. Swacker: He said that they were shipped for the same purpose before and after.

By the Court: You mean you don't know what they did with it after they got down there?

A. No, sir.

By the Court: But do you know for what purpose it was shipped down there, do you know what they shipped it down there to do with it? Do you know in the administration, the conduct of the business do you know what it was shipped down there for?

A. Only what I was told by the superintendent that it was shipped there to be reblended.

Q. You spoke about the color; is it a fact that you could tell with the eye the difference in the color between the naptha that was brought up from Port Arthur and the casinghead gasoline. Is that a fact that you can distinguish by looking at it, or does it have to be tested by a certain apparatus?

A. We made an effort to have all our shipments as near water-white as possible and if the naptha was badly off color it would cause the blended product to be off color.

Q. Can you tell the color of the naptha as it comes out by the eye, whether it was on or off color, or did you have to use apparatus in order to determine color.

A. We used cut bottom bottles for that.

Q. You used a cut bottom bottle you say?

A. Yes, sir.

Q. Now, it is a fact in order to determine the color of either the naphtha, or casinghead gasoline you would have to use an especially constructed apparatus for that, isn't it?

A. To be very accurate in the color, yes, sir, it would.

Q. Did you have such an apparatus out there and did you take the color test of this material?

A. Only so far as using a cut bottom bottle, that is all we used.

Q. Then in your judgment what color was it, on or off color, water-white, or what, or under?

A. It was very close to water-white.

Q. And you think you can depend on your eye by looking through bottom bottle?

A. Well, yes, sir, you can determine whether it is a clear white or not.

Q. Was it part of your business to make the test?

A. We would examine it.

Q. Who is we, did you examine it?

A. I examined a lot of it myself and had assistants to examine it.

Q. Was it part of your duty to make the color test?

A. Yes, sir.

Q. You don't know the naphtha that came which you blended with that was not gasoline?

By the Court: That commodity—that came from Port Arthur?

A. I never remember it being billed in as gasoline.

Q. You know whether it was gasoline or naphtha?

A. I could not say it come under the name of heavy naphtha—we called it heavy naphtha.

Q. How was it billed? A. Heavy naphtha.

By Mr. Diggs: That's all.

*Redirect Examination of the Witness by Mr. Payne.*

Q. Were there any cars of off color naphtha that came in to Kiefer from Port Arthur?

A. There was very few cars that you term badly off color, might have been off color what we had to test was to find out whether it was badly off color enough to make a blended color. Might have been slightly off color as it came in but there was very slight amount to my recollection.

Q. But what is your recollection, what was the number of off color cars that would come in on an average per month? What part, what percentage?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: You went into it and asked about it.

By Mr. Diggs: We object—we went into it because he testified about the color, I asked him to show he did not possess knowledge to know what the color was.

By the Court: Why do you want to show that.

By Mr. Payne: To show most of the cars were water white. That is all.

(Witness dismissed.)

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By the Court: The court will take a recess until nine o'clock. I am going to hold—we will meet at nine o'clock each day until we get through with this case.

By Mr. Diggs: If the court please, I think we can save time by meeting at ten or nine-thirty.

By the Court: You will have to get up earlier.

By Mr. Diggs: I am willing to come at nine but I think we can save more time—

By the Court: Gentlemen of the jury, you are cautioned not to read the newspapers, they are liable to publish articles about this case, so you don't want to do anything that will disqualify you from being a fair juror. You cannot tell what the newspaper will write so in order that there will be no danger about that just lay off reading the newspapers, don't read them at all. Now don't let anybody talk about this case in your presence and if anybody comes along and make or mentions this case, move on and leave him. Don't even discuss it among yourselves, don't talk about it and don't let anybody else talk about it in your presence. You may go and separate under the admonition of the court and meet here tomorrow morning at nine o'clock. The audience will keep their seats and let the jury pass out.

Court: Court will now take a recess until tomorrow morning at nine o'clock.

(Whereupon court took a recess until Tuesday morning at nine o'clock, April thirteenth, nineteen hundred twenty.)

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MORNING SESSION, APRIL 13, 1920.

(Whereupon, court met pursuant to adjournment and Honorable R. L. WILLIAMS, Judge, present and presiding, and the jury in this cause having been called and all found to be

present and counsel for plaintiff and counsel for the defendant, announced that they were ready to proceed, with the trial of this cause the following proceedings were had, to-wit:—

By Mr. Chambers: If the court please, the prosecution in this case has caused subpoenas to be issued for certain witnesses to produce certain papers and books and records. Of course the prosecution would like to have an opportunity before they introduce those records in evidence to inspect them for the purpose of determining whether or not they are material and competent, that is from our records as we have them we expect those records—the record to show they have subpoenas to show certain things.

By the Court: Here is what the practice is—what is it, Mr. Diggs?

By Mr. Diggs: I was just getting up for the purpose of hearing:

By the Court: With reference to the record called for the subpoena duces tecum—

By Mr. Chambers: I spoke to Mr. Diggs and he refused to give us the records.

By the Court: The way you would have to do that is to put a witness on the stand and ask them to produce the papers, put a witness on the stand and then they are in the custody of the court. I will then permit you to examine them. That is the only legal way.

By Mr. Diggs: If the court please before we are directed by the court to turn the papers over to the Government—

By the Court: They will be turned over to the court.

By Mr. Diggs: We say the law is when we are summoned by subpoena duces tecum, the practice is we produce the witness the paper is submitted to the witness to examine by the Government to find whether he has certain papers in his possession showing certain facts—

By the Court: Relative to certain matters.

By Mr. Diggs: Yes, sir, if he has them he has to produce the papers and what he says is to be read in the record, these are our papers and no law requires them to be delivered to anyone for inspection.

By the Court: I will permit them when they are produced in court and then they can determine whether or not they want to produce them. I will permit them to do that. They are not in the possession of the Government but are in possession of the court.

By Mr. Diggs: Yes, sir, but that practice is not to be permitted to require us to bring a vast amount of papers in and let them go through to see what is in them.

By the Court: I will take care of that—Now on this record, page 3, the clerk's record, is the record, this don't show the jury was re-sworn. The record should show and by agreement it was accepted by both sides and by agreement on each side the jury was re-sworn. It is not necessary to be put in this record but if they attempt to keep it correct I want to keep it correct.

The Court: Now I notice this record made here yesterday on page 3 of the record—of course the clerk's record is the one that should show it and does show it, but as they are trying to keep a stenographic report, it don't show the jury re-sworn. The record should show that when the juror was accepted by both sides by agreement of counsel that the jury was resworn to try this case. Now I will not attempt to watch the correctness of the evidence except where there are exceptions, so the attorneys on each side ought to watch this record. There are several mistakes but they are so patent on their face they can be easily corrected.

Mr. Diggs: They can be corrected as a matter of fact as typographical errors.

The Court: I will mark them and the stenographer can show them to counsel on each side.

Mr. Chambers: If the court please, there is one matter I want to call to the attention of the court with reference to your procedure. Is it necessary in making the statement to the jury to state that the defendant was arraigned and plead not guilty to the indictment? Is that necessary in the statement?

The Court: I think not, the record shows it. Everything that is in the record in the case—the jury has got nothing to do whether it is properly arraigned.

Mr. Chambers: Mr. Diggs, we subpoenaed Mr. John W. Tryon and we excused him as I understand the agreement on your part you would substitute some other witness who would testify to the same matter with reference to certain records that we subpoenaed him to bring here. We would like to have that witness, we would like to produce him first, just for the purpose of getting these records.

Mr. Diggs: Well, we have Mr. Slater or Mr. Pritchard.

Mr. Chambers: They both have charge of these records?

Mr. Diggs: The records are here, they know as much about them as the man you subpoenaed.

The Court: Well, are they legal custodians of them?

Mr. Diggs: Well, neither one of the gentlemen subpoenaed were legal custodians. We are not raising that question. We have the books here and there are no questions as to the identity. There may be some question as to their admission but not as to their identity.

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Thereupon, WILLIAM A. SLATER, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Slater by Mr. Chambers.*

Q. Will you state your name to the court and jury?

A. William A. Slater.

Q. And where do you live, Mr. Slater?

A. Port Arthur, Texas.

Q. Port Arthur, Texas. The jury can probably hear you. I am hard of hearing myself. I have got to hear you. What is your business?

A. Assistant superintendent of the Gulf Refining Company.

Q. At Port Arthur, Texas? A. Yes, sir.

Q. Have you charge—that is I might make a statement—We issued a statement to Mr. Tryon—

By the Court: Ask him if he has certain records.

By Mr. Chambers: I didn't suppose he did. I can ask him the direct questions.

*By Mr. Chambers.*

Q. Have you here at this time under your control—

By Mr. Diggs: I was going to suggest to save time that if Mr. Chambers will tell us what records he wants we have them here.

By the Court: What do you want?

By Mr. Chambers: I want the original paid freight bills covering the cars which are listed here and consigned to the Gulf Refining Company at Port Arthur, Texas.

By the Court: Call the number of the cars so as to put it in the record.

By Mr. Chambers: From Kiefer, St. Louis and San

Francisco, car C. R. C. X. No. 1030, dated 1-1-17; freight bill 1788. Now there is a whole list of these, if the court please.

Mr. Chambers: From Kiefer, the St. Louis-San Francisco, Car Initial and number G. R. C. X. first one, 1030, that is the initial and number of the car. We have got the date when it was unloaded, 1-1-17, freight bill Number 1788. Now then we want that. There is a whole list of these, if the court please—

Mr. Diggs: Are you now after the ones in the indictments?

Mr. Chambers: G. R. C. X.—I don't know.

Mr. Payne: Yes, sir, they are all in the indictment.

Q. Have you got G. R. C. X. 1030? A. Yes, sir.

Q. Will you please lay that aside, G. R. C. X. 1001, kindly lay that aside. G. R. C. X. I don't read any better than I hear.

Mr. Diggs: Let me suggest I show this to the witness and he can take it and see if those are in there.

Mr. Chambers: Very satisfactory, he can check it over and if it suits the convenience of the Court and the attorneys for the defendant, he can take the list and go outside and do that and we can be examining another witness.

The Court: Very well.

Mr. Chambers: If that would suit them better, and then we can check it up.

A. You want this list checked with these numbers?

Mr. Chambers: Yes, sir, and the cars and the freight bills. I believe Mr. Sweet is our next witness, I gave the names to the bailiff.

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Whereupon, Mr. C. E. SWEET, a witness on behalf of the government, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. C. E. Sweet by Mr. Chambers.*

Q. You may state your name to the Court and jury.

A. C. E. Sweet.

Q. Where do you live, Mr. Sweet? A. Kiefer, Oklahoma.

Q. What is your business?

A. In charge of the gasoline plant there.

Q. I did not hear you.

A. In charge of the gasoline plant.

Q. You are in charge of what gasoline plant?

A. The one gasoline plant, the one at Kiefer.

Q. And what is—what is the name of the Company that owns and runs this? A. Gypsy Oil Company.

Q. Gypsy Oil Company? A. Yes, sir.

Q. There was a subpoena served upon you Mr. Sweet to be in attendance upon this Court and to produce certain papers? A. Yes, sir.

Q. You received that subpoena? A. I did.

Q. Now after those papers—now have you those papers with you, did you bring them?

A. I have what papers were in my possession, yes, sir.

Q. That is all that I can ask for, have you got them here?

A. Yes, sir.

Q. Will you produce them? A. Yes, sir.

(Witness produces papers and hands them to Mr. Chambers.)

By Mr. Chambers: Now if the Court please while we are examining this witness I would like to have one of those papers examined by one of my co-counsel.

By the Court: Open them in the presence of the court and identify them.

By Mr. Chambers: Does the court mean to identify them by the stenographer, identify them as exhibits?

By the Court: Yes.

(Papers identified as Government's Exhibit No. 4.)

By Mr. Diggs: If the court please we desire to make an objection and take an exception to the ruling of court, that we produce any papers for the inspection of the Government's attorneys. We insist that if they are produced and in Court they then become a part of the record. That there is no law by which the Gypsy Oil Company is compelled to deliver its private papers to the inspection of any person except in so far as such papers contain relative matters to the investigation.

By the Court: Now this witness was asked the question if he had the papers in his possession, that he was required under the subpoena duces tecum to bring here. He said he had and he produced them. They ~~are~~ identified. Now I permit counsel to inspect them to determine whether or not they shall be offered in evidence. You may have an exception to that.

Mr. Diggs: To which ruling of the Court the defendants except on the ground it constitutes an unlawful seizure and inspection of papers prohibited by the constitution.

The Court: Very well.

Q. How long, Mr. Sweet, have you been in the employ of the Gypsy Oil Company? A. May 1, 1916.

Q. May 1, 1916. Have you been continuously in their employ since that time. A. I have.

Q. What has been the character—what is the name of the positions that you have held since that time, and you might state what is the extent and nature and character of your work under the various positions?

A. I was first employed as plant foreman.

Q. Where?

A. At Kiefer, prior to the time the Jenks plant was built, afterwards promoted to assistant superintendent and then I was placed in charge of both plants.

Q. Now then at Kiefer, that was where you had—

The Court: Now this man is an employee of the Gypsy Oil Company and not the Gulf Refining Company?

Mr. Chambers: I understand that.

The Court: I am asking him that. You are an employee of the Gypsy Oil Company and not the Gulf Refining Company? A. Yes, sir.

Q. And these papers you brought here are papers and records of the Gypsy Oil Company and not the Gulf Refining Company? A. Yes, sir.

The Court: Very well, go ahead.

Q. In Kiefer you had one of these gasoline plants, gas compression? Is that right? A. Yes, sir.

Q. That is, you produced casinghead gasoline from the gas by the method of compression?

A. That is what you would term it, most generally termed.

Q. That is what it is most generally termed?

A. Yes, sir.

Q. By people in that business? A. Yes, sir.

Q. And your system at Kiefer after you had produced the casinghead gasoline was to mix that or blend it with another commodity and then ship it south to Port Arthur, is that right? A. Yes, sir.

Q. During all these years from 1916 up until sometime in 1919? A. Yes, sir.

Q. That was the procedure of the product that you blended with the casinghead gasoline that came from the Gulf Refining Company at Port Arthur? A. Yes, sir.

Q. But was blended and mixed there at the Kiefer plant?

A. Yes, sir.

Q. Now you say that you also have had charge of the plant at Jenks? A. Yes, sir.

Q. And the same kind—it has been suggested and before I go any further go back to Kiefer in your mind. I don't mean actually. And what was the proportion, the average proportion, of each of the commodities that were mixed together. Do I make myself plain to you? A. Yes, sir.

Q. Alright. A. I think it averaged about thirty-three and a third per cent of crude naphtha with the product.

Q. Thirty-three and a third per cent of crude naphtha?

A. Yes, sir.

Q. When you say crude naphtha you mean the commodity that was shipped from Port Arthur to Kiefer for the purpose of putting in this blend? A. Yes, sir.

Q. About thirty-three and a third per cent of that product which you call crude naphtha. A. Yes, sir.

Q. You don't know how that naphtha was manufactured, that is you were not present and did not have anything to do with the process? A. No, sir.

Q. You call it crude naphtha because that was the manner in which it was billed to you from Port Arthur, don't you—

By Mr. Diggs: We object to counsel cross examining and leading his own witness.

By Mr. Chambers: I don't mean to lead the witness, just trying to get to the witness what I desire—

By the Court: I would permit you to do it under certain circumstances. He is a witness that is supposed to be affiliated with the defense, but I think it is a better practice to proceed on the theory of not leading him.

Mr. Chambers: I will try to do that as best I know how.

The Court: Now why do you call it crude naphtha?

Mr. Chambers: I would rather go after it in the other way.

The Court: I ask him; that don't call for a leading question.

Mr. Chambers: I had rather go after it in another way.

The Court: Now let's see your way.

Mr. Chambers: I was going to ask him if he knew anything about the manufacture and the production or process by which these particular commodities that came from Port Arthur to Kiefer was made.

The Court: I will ask him this question.

By the Court:

Q. Why do you call that crude naphtha?

A. That was the only term we had for it, it was billed to us as crude naphtha.

Q. The only reason you say it is crude naphtha is because the billing which comes to you from the railroad at Port Arthur says it is crude naphtha, isn't it?

A. Well, not necessarily, we always spoke of it as crude naphtha.

Q. You people at Kiefer spoke of it as crude naphtha?

A. Yes, sir.

Q. But you didn't know anything about what it was as it was manufactured at Port Arthur? A. No, sir.

Q. Now, as a matter of fact, prior to December 2, 1916, that same commodity was sent up here and billed as naphtha?

A. I don't know.

Q. You don't know? Weren't you there?

A. Sure, I was there, but I was not supposed to know everything. I was only there six months then.

Q. Well, you were foreman of the plant?

A. I was foreman but didn't understand about the billing.

Q. Well, you were foreman afterwards and you remember it was billed as naphtha? A. Yes, sir.

Q. Prior to December 2, 1916, it was billed to Kiefer as plain naphtha?

A. I was foreman and possibly didn't see the bills.

Q. Do you remember that prior to a certain time it was billed as naphtha from Port Arthur and that then another rate was put in and it was billed as crude unfinished naphtha?

A. It depends on what time you are speaking of.

Q. Let's put it December 2, 1916?

A. No, sir, I do not.

Q. You do not remember anything as to the billing prior to that time? A. I couldn't say I saw the bills.

Q. What were your duties prior to December 2, 1916?

A. I was in charge of the construction, yard work.

Q. You didn't have anything to do then with the receiving of the north bound shipments?

A. Possibly may have had something to do with the unloading of it.

Q. But not with examining the way bills? A. No, sir.

Q. Or anything of that kind? A. No, sir.

The Court: Who checked up the way bills, the freight receipts, whose duty was that?

Mr. Swacker: If the court please, I don't think this witness knows it but we don't dispute that fact; we dispute the relevancy.

The Court: I just wanted to see. Whose duty was that?

A. The superintendent and clerk in the office, I suppose.

Mr. Chambers: Do I understand they make an admission prior to December 2, 1916, this same commodity was billed from Port Arthur as naphtha?

Mr. Swacker: Yes, we do concede that, but we deny absolutely its materiality. The facts will develop that there was no other rate by which it could be shipped.

The Court: That is a matter which will come up later

Mr. Swacker: Yes, sir, that is the reason we say it is irrelevant. It is exactly the same proposition as to the question that arose yesterday.

The Court: Very well, I will let him go along.

Mr. Swacker: Note our exception.

The Court: When they offer the proof I will let you except.

Mr. Chambers: Well, if they make the admission doesn't that make it a part of the record to the jury without offering it?

The Court: Are you willing to get it in that way?

Mr. Chambers: They put it in.

The Court: I understand prior to December 2, 1916, that the government offers to prove—

Mr. Chambers: That the north bound shipments—

The Court: That this commodity which was shipped from Port Arthur to Kiefer for the purpose of being blended with the casinghead gas was billed as naphtha.

Mr. Swacker: Yes, sir.

The Court: And that after December 2nd it was billed as crude naphtha?

Mr. Swacker: Crude unfinished naphtha. We don't want the statement in the record that we put it in.

The Court: No, I said the government, and the defendants save an exception to its relevancy or materiality in order to shorten the record, admit the fact.

By Mr. Swacker: We want the basis of our objection—

By the Court: And the court admits this for the purpose for showing the conduct of the business and during that period and grant an exception to the defendant.

By Mr. Swaecker: And we want to go further and state the basis of our objection. We assume this evidence to be offered as stated by the court indicating the course of conduct and we say it would be admissible only if it were shown that all the surrounding circumstances were identical, especially the material circumstances that under the evidence as stated there was a change in the rate which was the most material circumstance, and no offer has been made to prove that the circumstances were identical or such a basis as would admit this evidence and wherefore we say it is incompetent, irrelevant and immaterial.

By the Court: For the present it is admitted and your exceptions saved. Now the record shows on yesterday "no not as alleged but we will admit the cars mentioned in the indictment were shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and place and on the times mentioned." They have not got the words over the line. Those words ought to be in there.

By Mr. Chambers: That is the admission.

By the Court: It was admitted yesterday but they have not got that in the admission.

By Mr. Diggs: I don't know that we admitted that but we will admit it.

By the Court: You admit it all except all over the line mentioned, that would be necessary or they would have to prove it.

By Mr. Diggs: In excuse of the stenographer, I don't remember stating those words but we have no objection to their going in.

By Mr. Chambers: Let the record show that is an admission as if on yesterday.

By the Court: The record will show that, he says he will admit that.

Q. Now then, you also performed certain duties at Jenks, didn't you? You stated awhile ago there was a casinghead gasoline plant in Jenks. A. Yes, sir.

Q. Is that of the same kind and character as the casing-head gasoline plant in Kiefer, compression?

A. Same kind only on a smaller scale.

Q. That is, it is a smaller plant. A. Yes, sir.

Q. That is, you bring the gas out of the oil well and transport it through pipes to your plant and there it goes through certain processes, the gas itself whereby this liquid which we are calling casinghead gasoline is produced? A. Yes, sir.

By the Court: You state that the Jenks plant is a compression plant too? A. Yes, sir.

By the Court: Now, that was all gone over yesterday and explained to the jury by one of these witnesses what a compression plant was.

By Mr. Chambers: I am sure I was trying to make it just as plain as I could. I am not trying to repeat anything.

Q. Now, do you ship this product that you manufacture at Jenks to Port Arthur? A. Yes, sir.

Q. And you ship it to the Gulf Refining Company?

A. Yes, sir.

Q. And you ship the product the liquid you take from that compression plant to Port Arthur without mixing it with anything whatever? A. Yes, sir.

Q. In other words—

By the Court: You mean you ship the casinghead gas without blending it?

A. Yes, sir.

By the Court: It isn't mixed with the product it is mixed with at Kiefer? And is not mixed with any product whatever but it is a commodity that comes out of your compression plant?

A. Yes, sir.

By the Court: That is put in these tank cars and is a liquid, the same thing that you produce at Kiefer?

A. It is casinghead gasoline as we call it.

A. It is the same thing only we do not blend it as we do at Kiefer.

By the Court: You mean now you shipped the identical commodities, to-wit, casinghead gas from Kiefer to Port Arthur with which you blend at Kiefer with the product that is received from Port Arthur?

A. Yes, sir.

By the Court: Go ahead.

By Mr. Gann: May I suggest the record your honor shows a shipment of casinghead gas. Our position is that is a liquid and is therefore casinghead gasoline.

By the Court: You say you called it casinghead gas or gasoline?

A. Call it unrefined naphtha.

By the Court: You mean this stuff you shipped from Jenks you called that unrefined naphtha?

A. Yes, sir.

Q. And the blended stuff you shipped from Kiefer you also called that unrefined naphtha?

A. Yes, sir.

Q. You never called the blended stuff you shipped from Kiefer, unrefined naphtha until after the 2nd of December, 1916, did you?

A. No, sir.

By Mr. Swacker: We object to that on the same ground as the previous objection.

By the Court: Very well.

By Mr. Swacker: Give us an exception.

By the Court: What did you call it in the shipment of it prior to December 2, 1916?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not within the issues in the case and not shown that the witness knows.

By the Court: You may have your exceptions.

A. I was not in a position to know. I was not in charge of the shipments at that time.

By the Court: Were you working there?

A. I was working there.

By Mr. Diggs: We will concede—

By Mr. Chambers. We asked them to concede these facts. Now when we come to prove them they concede them.

By Mr. Diggs: We object to that statement, it is not within the issues in this case.

By the Court: Now both of you stop. Now do you know how it was shipped prior to December 2, 1916?

A. I know how it was loaded in the cars.

By the Court: Do you know how it was shipped and billed?

A. No, I do not.

By the Court: Do you know how it was billed after December 2, 1916?

A. I do.

By the Court: Why do you know how it was billed since when you do not know how it was billed before.

A. I was in charge of the shipments after October, 1918.

By the Court: Go ahead.

Q. You never heard the product that is produced from the compression plant called unrefined naphtha until after the 2nd of December, 1916, and you know that prior to that time it was always called casinghead gasoline and is yet?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and the witness not being shown to have a knowledge, assumed to him that it was called this prior to December 2, 1916.

By the Court: Objection overruled. You may have an exception.

Mr. Diggs: To the last part of the question we object as calling, or assuming that the witness knows a state of facts that is not shown in evidence that he does know. The first part we have no objection.

The Court: I will let him answer.

Mr. Green: We object to the method. It is not shown that the witness is entirely unwilling to answer.

The Court: I will permit it.

Mr. Green: And I think it is argumentative—

The Court: Answer the question.

A. After that date it was known as unrefined naphtha and prior to that date, commonly known as gasoline.

Q. And there are numerous other casinghead compression plants at Jenks and at Kiefer, are there not?

A. Yes, sir.

Q. And prior to December 2, 1916, they called their product casinghead gasoline?

Mr. Diggs: We object, incompetent, irrelevant and immaterial.

The Court: Yes, I will exclude that. The way the question is propounded I exclude it. I sustain the objection.

Mr. Chambers: I am sorry I put it that way.

The Court: Now, I want to ask him a question. How long have you been in that kind of business; you stated you were foreman of this casinghead compression gasoline plant. How much experience have you had in that kind of business?

A. Since May 1, 1916. I was foreman of the construction the first year.

The Court: Well, now, what kind of experience did you have prior to May 1, 1916?

A. I was in the coal business.

The Court: Very well.

Q. Now, you state that there are other casinghead gasoline plants at Jenks and Kiefer? A. Yes, sir.

Q. Will you tell me the names of the other casinghead plants at Jenks?

The Court: Read that question to which they objected.

(Record read by the Reporter.)

Mr. Chambers: I don't believe that is hearsay.

The Court: I will sustain the objection to that question.

Mr. Swacker: We ask that the jury be instructed with relation to it, because that has gone over the dam.

The Court: Very well, that is withdrawn from the consideration of the jury.

Mr. Chambers: He didn't answer the question.

The Court: Yes, he did.

Mr. Chambers: I beg your pardon, I didn't get that.

The Court: That is too general a question. I will let you show the conduct of that business and those that were engaged in it, but I don't believe I will let you do that yet. What is that admission about the officers of the Gulf Refining Company?

Mr. Chambers: That the Gulf Oil Company is a corporation and that the Gypsy and the Gulf Refining Company are subsidiary companies and that the Gulf Oil Company owns all the stock in the Gypsy and Gulf Refining Companies, except what stock was necessary to be issued to the directors for the purpose of qualifying them,

Mr. Diggs: I want to correct that admission. We admit all Mr. Chambers has said except the word 'necessary.' The Gulf owns all the stock of the Gypsy and Gulf except the qualifying shares held by the directors in each company.

The Court: Now is there any admission in there about the officers, their identity; is there any identity between the managing officers of the Gypsy and Gulf?

Mr. Diggs: There is no admission, as I recall the stipulation, as to the identity of the officers.

Mr. Chambers: Of course that is a matter that will be established as we go along in the trial of this case.

The Court: I know, but the court has got to rule on what is before it.

Mr. Chambers: Well, I think the evidence, if the

court please, sufficiently establishes that these parties were acting together in that the shipments were made from Port Arthur up here; in that the blend as made up here; in that the Gypsy sells the commodity to the Gulf Refining Company; and in that they are associated together as set forth in the stipulation. It seems to me that there you can see the common purpose.

By the Court: One corporation might own stock in another corporation and if the law permitted that, that don't show any criminal intent.

By Mr. Chambers: We haven't shown the criminal intent but will do it later on, but this is a question, I did not know this was a question of criminal intent but was a question of whether or not—

By the Court: Will that show any agency the fact one corporation owns stock in another, that show any agency itself.

By Mr. Chambers: In so far as these transactions have gone so far as it has gone, showing these two companies were associated together in producing this commodity that was shipped south.

By the Court: You are asking questions, the way these questions are propounded is hearsay unless there is enough privity shown between them to show—I don't think there is here. Now there is a certain way in the conduct of business by which, I think as far as I will let you go under the status of this case is to show what they did as a physical fact. What did you do in handling this business, how did you ship it, but as to what somebody said at the plant, I will not let you prove that.

Q. What other gasoline—easinghead gasoline plant are there at Jenks? A. The Oil States and the Tribes—

By the Court: If you will show how it was regarded up to that time and ask him how it was regarded in the scientific world in the approved science—

By Mr. Chambers: He is not a scientific man.

By the Court: If he knows.

By Mr. Chambers: How would he know if he is not a scientific man. I also asked him what it was called in the business world and the commercial world.

By the Court: You have not asked him that.

By Mr. Chambers: I have not yet, I have not considered him a competent witness on that proposition.

By the Court: I sustained the objection, go ahead.

By Mr. Chambers: That was—

By the Court: Go ahead. You didn't finish the answer.

A. Tribes—

Q. The Tribes Gasoline Company? A. Yes, sir.

Q. That is at Jenks? A. Yes, sir.

Q. What else? A. Small plant there known as the—

Q. The Ajax Plant?

A. It is a couple of miles from Jenks.

Q. They ship from Jenks?

A. I don't know where they ship from.

Q. The Aiken Plant? A. I don't know.

Q. You don't know?

A. I don't know anything about that one.

Q. The Monarch Gasoline Company?

A. The Monarch Gasoline plant is over there too.

Q. That is at Jenks, the Eagle Gasoline Company?

A. They are not at Jenks but are in that neighborhood, probably five or six miles.

Q. The Totum Gasoline Company? A. Yes, sir.

Q. That is right in Jenks? A. Yes, sir.

Q. The Motor Fuel Company? A. I don't know.

Q. Where is the Chesnutt & Smith Company, at Kiefer, or at Jenks? A. Kiefer.

Q. That is at Kiefer? A. Yes, sir.

Q. You have visited these plants, many of them?

A. I have visited a few.

Q. What ones have you visited?

A. I have visited the Oil States and I have visited the Chesnutt & Smith.

Q. Is their process of making casinghead gasoline similar to your process?

Mr. Diggs: We object, it is incompetent, irrelevant and immaterial, and on the further ground that the witness is not shown to know the process of these other parties.

Mr. Chambers: I am asking him if he visited them, and of course if he don't know he can say that.

The Court: Do you know by what process those other plants there make their commodity? Do you know whether they are compression?

A. Compression process I believe.

Q. That is, it is a similar plant to yours at Jenks?

A. It is compression process, that is what we have at Jenks.

The Court: And these other plants are compression plants?

A. Yes, sir.

Q. What is generally the vapor pressure of your casing-head gasoline that is produced at Jenks?

A. Well, it all depends. When it is ready for shipment it is ten pounds or under.

Q. In other words, for the purpose of shipping in ordinary tank cars, it is necessary that the pressure be below ten pounds? A. Yes, sir.

Q. And is this gasoline that is manufactured at Jenks generally or frequently when it comes out—when it is ready for shipment without any process whatever, is it under ten pounds?

A. Never had any without any process, we had to weather it there.

Q. In other words you have to weather—you don't weather it all?

The Court: What do you mean by weathering?

Mr. Chambers: I was just going to ask him that question.

A. We had to steam it and get the higher vapors off of it in order to reduce the vapor pressure.

Q. In other words, what you mean by weathering, you expose it to the atmosphere and the higher volatile vapors come off and that reduces the vapor pressure so that under the regulations of the railroad company you can ship it in the tank cars which they designate?

A. Not only that, but we have to steam it, heat it up and get these higher vapors off of it.

Q. You don't always steam it either?

A. Invariably, yes.

Q. Invariably you steam it, since when have you been doing that? A. Since the plant was built.

Q. That was the purpose of steaming it to accelerate it or quicken the evaporation of these vapors, that is the only purpose?

A. You can't weather it off in cold weather without steaming it.

Q. Not so much in cold weather as in warm weather?

A. Not sufficient to ship it in extended cold weather.

Q. That is if it was extended cold weather?

A. You couldn't reduce the vapor pressure sufficiently to ship it.

By the Court: What do you mean by extended cold weather, what degree do you mean?

A. I don't know exactly how long it would take to weather it, probably two months.

By the Court: What do you mean by cold weather, what degree?

A. Freezing weather.

Q. In the summer time the evaporation is very rapid without any steaming whatever. A. Yes, sir.

Q. Now then, and it might come in this connection—you say you weather this down to ship it in these particular cars to below the ten pound vapor pressure?

A. Yes, sir.

Q. If it is above the ten pound vapor pressure, how is it shipped. A. We don't ship it.

Q. You don't know anything about how it is shipped if it is above that, you don't know the regulations?

A. Yes, sir.

Q. You then ship it as liquefied petroleum gas, don't you, if it is above the ten pound pressure?

By Mr. Swacker: We object to the form of the question, we are willing for him to testify what the regulations are but the witness has just stated we never ship any above ten pounds and consequently never use the rates.

By Mr. Chambers: Let me strike that question, please.

Q. You say you do not know what the regulations are with reference to the shipment of the commodity if it is above the ten pound pressure? A. I know some of them.

Q. You don't know what other people use that ship it if it is above the ten pound pressure. A. Yes, sir.

Q. You know they ship it as liquefied petroleum gas if it is above the ten pound pressure?

A. In insulated tank cars.

Q. That is in accordance with the regulations of the tariff rates as well as the regulations of the interstate commerce commission? A. Yes, sir.

Q. That is your understanding. A. Yes, sir.

By the Court: Ship it as what?

By Mr. Chambers: Liquefied petroleum gas if it is above the ten pound vapor pressure.

Q. Now, after the 2nd of December, 1916, you say you shipped this commodity at Kiefer that was blended as unrefined naphtha to Port Arthur? A. Yes, sir.

Q. At that same time you shipped this same commodity that was blended to a Shady Side Pennsylvania, as gasoline, didn't you?

By Mr. Swacker: Object to both the form of the question as a deliberate attempt to get out a fact which we insist is irrelevant and to the answer on the same ground that it is utterly irrelevant, the circumstance not being shown as to what the rates and regulations provided to Shady Side.

By Mr. Diggs: Further that it is an assumption that the Gypsy has shipped and that this witness knows.

By the Court: I will permit the form of the question. I have heard the evidence of this witness but I want to see. You say at the same time while you were shipping this product from Kiefer to Port Arthur as unrefined naphtha you were shipping it to the Shady Side plant at Pittsburgh? Now who owns the plant at or near Pittsburgh?

A. Gulf Refining Company.

The Court: And what was it shipped there for, what purpose was it shipped to Shady Point?

A. I am not in a position to say. It was shipped there, that is a distributing point I believe, I have never been there, I don't know what it is.

The Court: I will permit the question to be asked.

Mr. Diggs: We save an exception.

The Court: Very well.

Q. Answer the question. Do you remember the question?

A. That is with reference to shipping to Pittsburgh?

Q. Yes. A. Yes, sir.

Q. And you shipped it as gasoline?

A. Yes, sir, and we shipped it—

Mr. Chambers: Now, I never asked you that.

The Court: If you want to volunteer that, that is a matter for the jury to determine. Go ahead if you want to volunteer an explanation, the court will permit you to do that.

A. We shipped this product to Port Arthur as unrefined naphtha because the tariff gave us a rate to Port Arthur. They didn't give us a rate to Pittsburgh and consequently we shipped it to Pittsburgh as gasoline.

Q. In other words, until the unrefined naphtha rate from your standpoint is put into effect, the designated term for shipping purposes of this commodity is gasoline, that is right?

A. The only term we had for it.

Q. Only term you had for it and shipped it as gasoline for that reason. A. Yes, sir.

Mr. Swacker. Now, we would like to renew our objection to this line of questions and ask that it be stricken out obviously as immaterial and wholly irrelevant it being apparent the conditions were not the same.

The Court: That is a question of fact for the jury to determine. They are the facts and the jury looks into them and sees. I think it is all right to make this explanation to show he is an employee of the oil company. The jury weighs that and weighs the reasons, if there are any reasons, and they weigh it. That is the issue in this case, the way I understand it, if it is properly termed under this tariff 'Unrefined Naphtha.' I will permit all this evidence to go to the jury for them to weigh it.

Mr. Swacker: We want an exception.

The Court: Very well.

Q. Now, at the same time you were shipping it, and after the rate of naphtha was established by the railroad companies, at the same time that you were shipping this commodity as unrefined naphtha to Port Arthur—I will ask you if you were not also shipping it to various places in drums and designating it as gasoline?

A. Not the same commodity, no, sir.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: He has already answered and said no.

Mr. Chambers: Yes, sir, I think he wanted to make an explanation and I would like to have the explanation, go ahead.

A. Shipped the same, but was blended down to a point—

The Court: I will stop you in this statement. I want the attorneys in this case to know I always instructed the stenographer never to put down an objection when the lawyer is sitting down in the court room. So you may lose some of your objections.

Q. If I understand you now, you shipped it as gasoline in drums, but you say that it was a material that had more of the naphtha in it, more of the commodity in it that was shipped from Port Arthur than the commodity that you shipped from Kiefer to Port Arthur, that what you mean, and for that reason you called it gasoline?

Mr. Diggs: I object to that as being irrelevant, incompetent and immaterial, and assuming facts this witness has not stated.

The Court: Unless—I believe I will exclude the evidence as to the drums in the shape it is at this time.

Q. In processes the material that you put in the drum what we called a casinghead gasoline and the product that came from Port Arthur to Kiefer and nothing else was put in it? A. No, sir.

Q. And no other process was gone through, it was merely the mixing of the two products but put in the drum, you put more of the Port Arthur product than you did in the shipments down to Port Arthur. A. Yes, sir.

Q. In tank cars?

By the Court: What period do those shipments cover?

By Mr. Chambers: After December 2, 1916.

A. Not necessarily after.

Q. Well, they were after and before both?

A. Yes, sir.

Q. Now, do you remember why those shipments were made and designated before December 2, 1916, why is it that you can remember that the tank cars that were shipped to Port Arthur were designated gasoline prior to December 2, 1916?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and argumentative.

By the Court: Yes, I think that is a matter to argue to the jury. I will sustain it on that ground.

By Mr. Chambers: Will you let me say a word?

By the Court: Yes.

By Mr. Chambers: He said he didn't know why it was shipped as gasoline to Port Arthur because he was in the construction department and didn't have anything to do with it.

By the Court: Now, here is the question. In your duties in the construction department did they bring it so you would ascertain how it was shipped in the drum. You can ask him that question. Then you can lay the predicate to argue to the jury. As I understand the rule a lawyer cannot engage in a controversy with the witness. I am going to rule he cannot answer that kind of a question. You ask him now as to why he didn't know how it was billed out in the tank cars prior to December 2, 1916, to Port Arthur, and he said he was in the construction department then and didn't have any opportunity. Now you can ask him how his duties in the construction department brought him in contact with the shipments in the drums so he could know how it was done.

By Mr. Chambers: Well, but he has voluntarily said—

By the Court: Now, I am just showing you I will let you ask those questions but I am not going to let you ask the other way.

By Mr. Chambers: I believe until there are some of these records I want to examine him on later, that is all.

By the Court: Well, you turn him over to the defense, subject—

By Mr. Chambers: Subject to the recall later.

By the Court: Very well, take the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. Sweet, you say you are the superintendent of the Gasoline plant at Kiefer and Jenks? A. Yes, sir.

Q. And you became superintendent of that plant on December 2, 1916. A. October 1st, 1918.

Q. October 1st, 1918? A. Yes, sir.

Q. Prior to that time you say you were in charge of the construction?

A. While the construction work was going on I was in the capacity of foreman.

Q. Will you state to the jury what construction work is?

A. The erection of the machinery about the plant, and buildings.

Q. That has nothing to do with the production of casing-head gasoline? A. No, sir.

Q. Or the operation of the plant? A. No, sir.

Q. Or the shipping? A. No, sir.

Q. Anything that you might know about how it was shipped prior to the time you became superintendent would be mere hearsay or conclusions that you might draw from a talk around the plant?

A. Merely from what I had learned in the operation around the plant.

The Court: You never saw any of the billing?

A. No, sir.

Q. You, from a scientific standpoint, Mr. Sweet, you know nothing of the proper name for material that comes from Port Arthur to be used in connection with the casing-head gas produced, do you?

Mr. Chambers: We object.

A. Nothing whatever.

Mr. Chambers: What was the answer?

(Answer read by the reporter.)

Mr. Chambers: Well, all right, that saves an objection.

Q. Had you been in the oil business or gasoline business prior to the time you became superintendent of the gasoline plant belonging to the Gypsy that you have mentioned?

A. No, sir.

Q. Are you acquainted with the minutia and facts of the general oil business further or other than the production of the substance called casinghead gasoline by compression plants? A. I am not.

Q. What—and if those were the real matters—do you know what the real matter of the substance produced are, further than they are called generally in loose speech in the country?

A. In general terms in the country.

Q. You said in answer, as I understood you, to a question from Mr. Chambers, that this system at Kiefer was to bring a substance known as naphtha, called naphtha, from Port Arthur to blend with the casinghead gasoline, do you mean to be understood that was the entire system of the preparation for shipping from Kiefer?

A. No, sir, I don't.

Q. Will you state to the jury whether or not that is but one of the steps in the preparation of the article for shipment?

A. That is one, as you stated, one of the steps in the preparation.

Q. Will you state the other steps?

A. The other steps are steaming and weathering it.

Q. Could you give in concise language so the court and jury may readily understand the facts that you gather, or the general name weathering process?

A. Weathering process is a means of raising the temperature of this low product sufficient to carry off the higher vapors which would cause the vapor tension, and this reduces this vapor tension, weathering it reduces the vapor tension.

Q. Does it reduce that tension by causing the evaporation of the lighter or more volatile elements of the materials that are treated? A. It does.

Q. Can you state, Mr. Sweet, the purpose for which the material called here unfinished naphtha, used in blending the casinghead gasoline, whether that is for the purpose of reducing the tension, or as a means of conveyance or retainer of the lighter qualities of casinghead gasoline?

By Mr. Diggs: I am asking if he can state it?

By the Court: How could he know unless he was an expert?

By Mr. Chambers: I want that question if the court please.

(Record read.)

By the Court: Now, I don't see how anyone could answer that question unless he was an expert.

By Mr. Chambers: We object to it for the reason the witness has not qualified himself to answer the question and it is incompetent and immaterial.

By Mr. Diggs: Give us an exception.

Q. You are the superintendent, you say Mr. Sweet?

A. Yes, sir.

Q. This blending is done under your order and direction?

A. Yes, sir.

Q. For what purpose do you put the naphtha in the castinghead gasoline?

By Mr. Chambers: Now the same is objected to for the reason the witness has not qualified himself to answer the question and is asking for a conclusion of the witness.

By the Court: He is an administrative officer, he couldn't testify about the chemical qualities unless he was an expert, he couldn't know any more about that than I would when I hear a law suit tried. I might know but I couldn't swear it was true. Just like a lawyer, he reads chemistry and examines the witness and he knows but yet he couldn't get on the witness stand and swear it. If he did he would be a reckless swearer.

The Court: Now, do you know this—why do you know this, Mr. Sweet. Why do you know the qualities of these component parts when they are applied? What are the effect of them? How would you know that?

A. I would know it from experience.

The Court: What kind of experience?

A. Blending.

The Court: Now, did you have any experience with the blending?

A. Seen it done sufficient times to know it.

The Court: Did you ever help do it?

A. Yes, sir.

The Court: And you have seen the physical fact, the result of it?

A. Yes, sir.

The Court: How much experience did you have in that work?

A. Well, the experience I had there at the plant?

The Court: Well, what period did it cover?

A. Oh, I couldn't say it covered any particular period. It was different times, no particular period.

The Court: Never studied chemistry or anything like that?

A. No, sir.

The Court: Well, I will permit it to go in but I will tell the jury I don't think it is of much weight, in my opinion.

Mr. Diggs: I don't think so either, if the court please. I am asking this line of questions because he was permitted over objection to testify in behalf of the government, about weathering this product and the purpose of weathering it.

The Court: I don't think you objected when he asked him what weathering was. I will permit it to go in but I have told the jury I don't think it is entitled to much weight, but they are the exclusive judges of it and will determine what it is worth.

Q. You stated in your direct examination, Mr. Sweet, that you were superintendent of the Gypsy Gasoline Plant. Will you please state what you mean by that term 'gasoline plant'?

A. Well, it is just generally called a gasoline plant.

Q. You mean a casinghead gasoline plant for production of gasoline?

A. Production of gasoline, casinghead gasoline, generally called a gasoline plant.

Q. You are using the term gasoline in this connection as synonymous with the terms "casinghead gasoline"?

A. Yes, sir.

Q. In reference to these shipments north and south that you have testified about, Mr. Sweet, they were made under your supervision? A. Yes, sir.

Q. This article was shipped by you north and south for the purpose of complying with what you understood to be the traffic regulations and regulations of the bureau of explosives? A. Yes, sir.

Q. You said a while ago that it was shipped in accordance with the vapor regulations of the railroad? A. Yes, sir.

Q. Do you mean to be understood as the railroad prescribing these vapor regulations or they were prescribed by the bureau of explosives? A. Did I say that?

By Mr. Chambers: I said the tariff regulations.

By the Court: If he used that he would mean nat-

urally the railroads would require the rules prescribed or laws to be fulfilled because they would be liable for penalties.

By Mr. Diggs: The jury don't know about that as you and I do.

A. Regulations prescribed by the Interstate Commerce Commission and the Bureau of Explosives.

Q. That is what you mean? A. Yes, sir.

Q. Immediately following December 2nd, 1916, how did you in shipping this material, describe it Mr. Sweet?

A. I am not in a position to say as I did not do the shipping at that time. I was not in charge of the shipping at that time.

Q. Well, following, October, 1918, when you went into charge or superintendent of the plant, how did you describe the article? A. As unrefined naphtha.

Q. Was there any other description by which you shipped it? A. To Port Arthur?

Q. Anywhere—no, to Port Arthur? A. No, sir.

Q. In shipping this to Port Arthur after October, 1918, in connection then with the use of unrefined naphtha, did you use any name also to designate it at the same time?

A. Yes, sir.

Q. What was that name?

A. There were times when we used casinghead naphtha.

Q. When was that you did that?

A. I think that was in December, 1919.

Q. December, 1919?

By Mr. Swacker: Until December?

A. It was in December, 1919, a short period.

By the Court: That was after this indictment was returned.

By Mr. Diggs: I have not really inquired as to that.

By the Court: That would not be competent, if there was any objection by the Government I would exclude that.

By Mr. Chambers: We will object, I was not objecting—but I was not as familiar with the date as I should have been.

By the Court: This indictment was returned in November?

By Mr. Diggs: I am not endeavoring to find out anything after the indictment was returned.

By the Court: No that—what happened after the indictment was returned will not be considered. Now, gentlemen of the jury, when evidence is brought out and I

may overrule it or overrule the objection or not sustain and then afterwards I sustain the objection although I may not especially call your attention to it, in every such instance I have excluded the evidence and the jury are instructed to not consider it for any purpose and that applies to every ruling that has heretofore been made in such respect and this will constitute a general instruction for this case.

Q. Mr. Sweet, after October, 1918, when you became superintendent, and prior to November 2, 1919, in shipping to Port Arthur this substance which we speak of as unrefined naphtha in connection with the term unrefined naphtha in shipping it and billing it, did you use any other term?

A. Not to my recollection.

Mr. Chambers: Just simply for the purpose of calling the court's attention to it, this question extends beyond the time when the shipments were alleged to have been made in the indictment. Not beyond the time of the filing of the indictment, but beyond the time when the shipments are alleged to have been in the indictment. But a portion of this testimony is within the time in the indictment. I think probably it ought to be modified to include the time within the indictment.

Mr. Diggs: Now if the government can step out of time and introduce proof we certainly can on cross examination.

The Court: I will permit them to go up to the time the indictment was returned. Of course the government on re-cross can go in and show that the government has begun an investigation and so on, just as you can come around and make your explanation, but on the face of it I will permit the defense to ask up until the time the indictment was returned, but of course on re-cross it would be permissible to show that a charge had been made, or any suit that was brought anything like that, because if there was a change in the course of any business, then to see what caused that, if it became material.

Q. Did I understand you to say, Mr. Sweet, that after you became superintendent you complied with the rules and regulations of the tariff prescribed by the Interstate Commerce Commission as to the shipping of the articles produced at Kiefer and Jenks?

A. I believe I did, I understood that I did.

Mr. Chambers: I move to strike the answer, and object to the question for the reason that it asks for the conclusion of the witness, and a construction of the Interstate Commerce acts.

The Court: Well, now, I will sustain that. I will permit him to state he attempted to do so and so, but that is a fact for the jury to determine what he did.

Mr. Chambers: Either for the jury or the court.

The Court: That is for the jury to determine under the instructions of the court. He may testify to what he attempted or endeavored to do.

Mr. Diggs: I am just asking the question because the gentlemen went over the same ground and asked the same question before.

The Court: If he asked the same question I will permit you, but I do not recall he asked such a question.

Mr. Diggs: Yes, sir, he stated on direct examination the substance and—

The Court: He volunteered the explanation and they objected to it, and I permitted him to do it. He stated why he did so and so, and on cross examination I will permit you to ask him if he endeavored to do so and so and comply with the law, and I will permit you to go that far, but to say that he did comply with the law and that that was a compliance with the law, that is testifying to a conclusion, substantially to a conclusive fact—a compound fact that is a sort of opinion, but I don't think the rule would go that far.

By Mr. Diggs: Mr. Sweet, in shipping this commodity it was your purpose and intention to comply with the rules prescribed by the Interstate Commerce Commission?

By Mr. Chambers: We object to that as incompetent, and asking for a conclusion of the witness.

By the Court: Now there is certainly some authority on that. Now this defendant is charged with a criminal offense and the question of intent is involved here. Now when the defendant is put on the witness stand can't you ask him why he was doing so and so, and he said I was complying with the law.

By Mr. Chambers: Now the general rule is he can state what he did and it is for the jury to determine what his purpose was from what he did do.

By the Court: That ain't any new question and the defendant can state what his purpose was. He is charged with an offense and he is on trial. These acts are part of the acts for which the defendant is charged thereby obtaining a concession.

By Mr. Chambers: I am not asking any—I am not

taking any exception to his being an employee of the Gypsy Company.

By the Court: Unless you show me some authority I will permit these employees to say that they were trying to comply with the law and that was their purpose in doing that and they were not seeking to obtain any discrimination or a concession as far as they were concerned. It may be that the subordinate might for that purpose be acting in good faith and if a superior officer had a different purpose that is what is going to control.

By Mr. Chambers: I think that is right to but the purpose of the superior officer would control. Of course I cannot lay my hands on the authorities, I may be wrong I am just giving you my best impression.

By the Court: I am just giving my fundamental ideas about it and if you have got any authorities I will re-consider the matter.

By Mr. Chambers: If we can find any authorities we will present them to the court on that proposition. I don't consider them very material.

By the Court: It is not controlling.

By Mr. Diggs: I don't think it is either.

The Court: But now say a man is on trial for murder and the doctrine of self defense is invoked. He testifies, "Now when I shot this man I believed my life was in jeopardy;" he could state that and it is for the jury to look at that.

Mr. Chambers: That is a well settled proposition.

The Court: Why isn't this, the question of intent is at stake; if they didn't wilfully do this with that purpose in view? If it was a civil action, although they made a mistake they could recover this freight, but this is a criminal action.

Mr. Chambers: I suggest there is no contention on the part of the government, and that might shorten matters, that they didn't comply with the safety regulations of the Interstate Commerce Commission, excepting as to the billing of the commodity itself.

The Court: That wouldn't go as to a matter of safety, would it?

Mr. Chambers: This regulation he is speaking about is altogether the rules and regulations of the bureau of explosives and showing the manner in which inflammatory articles should be shipped. Our position is and will be, and it is right that I should state it, that really they

haven't complied with the regulations in so far as describing the commodity itself.

The Court: That would just go as to classification.

Mr. Chambers: That is all, it goes as to classification.

The Court: You don't claim they violated the rules as to safety?

Mr. Chambers: No, sir.

Mr. Swacker: The government concedes that we did comply with the transportation regulations.

Mr. Chambers: Except as to the designation of the commodity that was shipped.

The Court: And that that failure, according to the contention of the government, would only relate as to the rate of freight.

Mr. Swacker: That is what I understand now. We are endeavoring to get from this witness the safety transportation regulations without regard to freight rates requiring a certain description to be applied to this product, aside from the description—

By the Court: I will let him testify that in doing that they acted with the purpose of complying with the law and that is for the jury to determine that.

By Mr. Gann: Your honor, please may the record in this case show that the government does not concede the defendant complied with the safety rules as broadly as counsel states it. We concede so far as the placarding of the cars is concerned that they complied with the rules. We do not admit that the commodity was described in accordance with the rules, and regulations.

By the Court: I so understand and that is the reason I permitted them to ask the question.

By Mr. Chambers: That is what I thought I said.

Q. The court says you may answer the question.

A. It was.

Q. In pursuance of that purpose, Mr. Sweet, in designating this material as unrefined naphtha, did you use in connection with that term, any other term which tended to show the original of the substance, what it was?

A. We did for a time, we termed it as casinghead naphtha.

By Mr. Chambers: When?

By the Court: Between October, 1918, and March, 1919.

Q. Do you remember the date when that was done.

A. I don't remember of any other term being used between those times except as classification 18 24. K appeared.

Q. You just said a minute ago, Mr. Sweet, before we stopped to get the date, that you were using the term 'casing-head naphtha'? A. In December, 1919.

Q. Did you use that term, or an equivalent term, between October—

The Court: Well, not an equivalent term, did you use any other term between what dates?

Q. Between October, 1918, and March, 1919?

The Court: Use any other term now in the shipment of this identical commodity.

Q. Yes, in connection with the term 'unrefined naphtha,' such as gasoline or casinghead gasoline or casinghead naphtha.

A. For a time we used the term casinghead naphtha.

The Court: Now, I will let you refresh his recollection if you have the bills of lading, you may show them to him.

Mr. Swacker: Will the government produce those bills of lading covering shipments from October, 1918, to the last date in the indictment, March 18, 1919?

Mr. Payne: I will get them for you.

The Court: Now, when they recall him you can put this in and look up your papers and have them ready.

Mr. Diggs: We would have them ready if they had not taken them away from us.

The Court: That has nothing to do with it. If they were taken away from you, so far as this jury is concerned they were taken away as a matter of law. If that was wrong that is a matter that can be corrected later.

Q. Mr. Sweet, I understood you to say in answer to a question by Mr. Chambers, that you had shipped to Port Arthur, or West Port Arthur, rather, do you mean to say that you want to be understood as saying that you shipped to any other points than that shown by the bills of lading and shipping orders? A. No, sir, no other points.

Q. Do you know whether those shipments were made to Port Arthur or West Port Arthur?

A. The bills of lading show they were made to Port Arthur.

The Court: Anything further now?

Mr. Diggs: Excepting refreshing—

The Court: Well, when he is recalled.

Mr. Chambers: When you say Port Arthur, your refinery is at West Port Arthur?

A. I have never been down there, I couldn't say where it is situated.

Mr. Chambers: Don't you receive correspondence from there?

The Court: What would be the materiality?

Mr. Chambers: I don't see that it would be.

The Court: The refinery may be at West Port Arthur.

Mr. Swacker: We think the bills of lading are the best evidence of how they were shipped, and they show.

The Court: Well, they were billed to the Gulf Refining Company, were they?

A. Yes, sir.

The Court: How does the indictment alleged?

Mr. Swacker: West Port Arthur.

Mr. Gann: If the court please, that is a rate question which we will show from the testimony.

Mr. Swacker: We object to these statements.

The Court: Very well, that is a matter for the enlightenment of the court.

Mr. Swacker: We except to the statement.

The Court: The jury will not consider anything the lawyers say as evidence on either side.

*By Mr. Chambers.*

Q. Just when you refer to the section of the transportation of explosives that you—

By the Court: Is it admitted that this refinery is located at West Port Arthur.

By Mr. Swacker: Yes, sir, we will admit that the refinery is located at West Port Arthur.

By the Court: And the place where it is located is called West Port Arthur?

By Mr. Swacker: Yes, sir.

By Mr. Chambers: Shall I go ahead— No, you had the witness.

*By Mr. Diggs.*

Q. You look at the paper purporting to be a bill of lading from the Midland Valley Railroad Company dated November 1st, 1918, and particularly in reference to describing the contents of the two tank cars therein. A. Yes, sir.

Q. After inspecting that instrument can you now say Mr.

Sweet whether in shipping the products at Jenks and Kiefer between October, 1916, and March, 1918—1919, did you use any other descriptive term designating the material in connection with the unrefined naphtha?

A. Yes, we do, casinghead naphtha.

By the Court: Now what is the designation of the material to be shipped under the rate which you claim—

By Mr. Swacker: That is exactly what this case involves. The tariff rates unrefined—

By the Court: You are giving me information of an expert, just answer, and give me the information I ask for.

By the Court: I wanted to know just exactly the language so I could keep the matter in my mind as we travel on.

By Mr. Swacker: Unrefined naphtha meaning the schedules covering the rates and charges—

By Mr. Chambers: Of course the court understands the rates on gasoline, casinghead gasoline and unrefined naphtha, there—that is there are rates on all.

By the Court: There was a specific rate as to each one.

By Mr. Chambers: Yes.

By Mr. Swacker: There is not a tariff rate showing specifically casinghead naphtha.

By the Court: Very well.

By Mr. Swacker: We object to the statement being made in the presence of the jury and ask an exception to this.

By the Court: I have instructed the jury they will not take the statements of any of the lawyers as evidence in this case, and admonish them not to consider statements of either side as evidence in this case unless it is done by a solemn admission as approved by the court.

Q. After inspecting this instrument, Mr. Sweet, can you now state of your own knowledge as to whether or not the ears shipped from Jenks and Kiefer had placards on them and how they were placarded.

By Mr. Chambers: Of course we admitted that they did have the placards on them.

By Mr. Swacker: You gentlemen said you would admit it in some cases and in some cases you wouldn't. It is now admitted they were properly placarded to comply with the regulations.

By Mr. Gann: I do.

By Mr. Swacker: The bills of lading bore a stamp on their face stating that these dome placards had been applied throughout the period of time covered.

By Mr. Gann: That the dome placards had been applied to the cars?

By Mr. Swacker: Yes.

By Mr. Gann: We admit that.

Q. Mr. Sweet, can you state under the rules of the Interstate Commerce Commission to what material the dome placards or placards mentioned were required to be affixed?

Mr. Chambers: I object to that as the regulations themselves could be the best evidence and the regulations may be admitted. There is no objection to the admission of the regulations. As a matter of fact they ought to be in.

Mr. Swacker: Do you admit those dome colored placards applied only to cars containing casinghead naphtha?

Mr. Chambers: Casinghead naphtha?

Mr. Gann: The government will admit that the dome placards are necessary only where the tank cars contains any admixture of casinghead gasoline with other petroleum products, or casinghead gasoline alone.

Mr. Swacker: And will you further admit that they were not used only as required under the regulations?

Mr. Gann: Yes, sir.

Mr. Swacker: Then the affect of that admission is that the dome colored placards are permitted to be used and required only on casinghead gasoline or an admixture of casinghead gasoline and something else.

Mr. Gann: In other words, it is casinghead gasoline or contains casinghead gasoline.

Mr. Diggs: You may take the witness.

The Court: The witness may be excused, subject to be recalled on the matters stated by the government for further direct examination.

Witness excused.

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And thereupon D. B. CATTERLIN, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court? A. D. B. Catterlin.

Q. What is your position officially with the Gypsy Oil Company? A. Assistant secretary.

Q. As assistant secretary have you, were you served with a subpoena to bring with you certain books and records of the Gypsy Oil Company?

Mr. Diggs: I object, the subpoena is the best evidence.

A. It was left on my desk.

Q. Did you bring those papers that you were requested to bring by the subpoena? A. Did not see the subpoena.

Mr. Diggs: I object as being incompetent, irrelevant and immaterial, and for the further reason that the records do not show that the witness Catterlin was directed by any subpoena to bring any papers into this court.

The Court: Introduce the subpoena in the record.

Mr. Chambers: You mean the original, I have not got the original.

The Court: Put the duplicate original in if you have one.

Mr. Payne: The original is in the marshall's office—I mean the clerk's office.

Mr. Diggs: If the court please, we have already told these gentlemen what papers they want we will hand them to them—well, if they want to go at it this way on examination, all right.

The Court: You don't seem to agree until you get here in court. Have you the papers.

Mr. Chambers: No, the copies.

The Court: Ask him if as secretary if he has certain papers with him.

Q. The subpoena asked for the original records showing tanks from which blended material was taken, the gravity, the temperature and the color when taken. Did you bring that record? A. I presume the record is here.

Q. You have the record? A. Yes, sir.

Q. Did somebody else bring the record?

A. I turned it over to Judge Diggs.

Q. You brought it and turned it over to Judge Diggs?

A. Yes, sir.

Q. Then were these records, are these records here that were asked for in the subpoena? A. I presume so.

Q. I understood you to say they were not.

Mr. Diggs: You mean you turned the subpoena over to me?

A. Yes, sir.

Mr. Diggs: You don't mean you turned over any papers to me.

A. No, sir.

The Court: Are the papers here the subpoena calls for?

A. I don't know.

Mr. Diggs: We did not know, they are trying to say that Mr. Catterlin is the man to bring them.

The Court: If he is secretary—

Mr. Diggs: He is not the man—

Mr. Chambers: He is served with a subpoena, and they filed a motion to quash—

The Court: Never mind that, they have them here in court, that is, they say they have them.

Mr. Diggs: If you will state what you want—

Mr. Chambers: We want exactly what the subpoena calls for.

Mr. Diggs: What particular ones do you want?

Mr. Chambers: We want all of them for the purpose of inspecting them.

Mr. Diggs: The Gypsy Oil Company—

The Court: You can get them here and have them here this afternoon and inspect them then and go on with another witness.

By Mr. Chambers: Mr. Diggs here is another subpoena to the Gulf Refining Company to bring in certain papers and I don't know who it was served upon but you know whether those papers are here or not?

By Mr. Diggs: Yes, sir, they are here.

By Mr. Chambers: Then we would like to have those without going through the process of putting on a witness.

By Mr. Diggs: Mr. Chambers don't get excited, we have the papers here to produce.

By Mr. Chambers: I beg your pardon, you know I am of an excitable temperament. Haven't I been telling you what I wanted.

By the Court: That is all uncalled for. Just tell them what you want.

By Mr. Chambers: I have told him just what I wanted. It is set forth here in black and white.

By the Court: What it is you want now?

By Mr. Chambers: You may stand aside.

(Witness dismissed)

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By Mr. Chambers: This is the one with Mr. Catterlin and they have a copy of it; they attached it to their motion; this is another one to the Gulf Refining Company.

By Mr. Diggs: We are not disputing service, Mr. Chambers, never have.

By Mr. Chambers: I don't think there is anything between us excepting we don't seem to be able to use language everyone can understand.

By the Court: Just stop all that talking; just talk to the court:

By Mr. Chambers: I beg your pardon, as far as I am concerned.

By Mr. Diggs: Will the court permit us, the Government has Mr. Sanderson subpoenaed as a witness and he is under the rule part of these papers are in his possession and I want him for the purpose of picking out certain classes of the particular papers.

By the Court: Call Mr. Sanderson.

By Mr. Diggs: That is as to the Gypsy Oil Company and I think also as to the Gulf Refining Company, too.

(Whereupon Mr. Sanderson came into the court room.)

By Mr. Diggs: Will you get me, Mr. Sanderson, the documents covering the shipping of unrefined naphtha from Kiefer, Oklahoma, to Port Arthur, Texas, and shipments of gasoline from Kiefer, Oklahoma, to Shady Side, Pennsylvania, in the cars designated in this matter, have you got those.

By Mr. Sanderson: Yes, sir, what documents do you want?

By Mr. Payne: May it please the court if we would pick out those papers we could take something else up.

By the Court: I suggested we turn these things over to them and have them back here at noon and the suggestion was not followed up by either side.

By Mr. Diggs: Our purpose in proceeding in this way we want to save certain exceptions, being compelled to produce certain papers as they are produced.

By the Court: You turn them over to them and I will let you have the exception. If there are any fundamental principles violated I want you to have an exception.

By Mr. Diggs: I want the record to show the character of papers we are compelled to offer.

By the Court: I think that is all right. Very well, proceed.

By Mr. Diggs: Will you get those papers, Mr. Sanderson?

By Mr. Sanderson: Yes, sir.

By the Court: While he is doing that you can put some other witnesses on the stand.

By Mr. Diggs: The only part I want to save an exception to is certain leases, private business that is what I am reserving. The other stuff we are willing for you to inspect.

By the Court: Has this witness been sworn?

By the Witness: No, sir.

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And thereupon, FRANK ROUTH, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Routh by Mr. Chambers.*

Q. State your name to the court and jury.

A. Frank Routh.

Q. Where do you live? A. Drumright.

Q. What is your business?

A. I am superintendent of the Drumright and Shamrock.

Q. You are superintendent of the Drumright what?

A. And Shamrock.

Q. At Drumright and Shamrock? A. Yes, sir.

Q. You are superintendent of the casinghead gasoline plant of the Gypsy Company at Drumright. A. Yes, sir.

By the Court: And also at Shamrock?

A. Yes, sir.

By Mr. Chambers: Shamrock is not—

By the Court: I know but I wanted to get the information.

Q. What is the character and nature of the plant you have at Drumright? A. It is a compression plant.

Q. It is what is known as a casinghead gasoline compression plant? A. Yes, sir.

Q. That is the liquid is taken out of the casinghead gas that is produced there? A. Yes, sir.

Q. Now, in that process of manufacturing or producing this gasoline, I will call it gasoline, the liquid from the casing-head gas, do you use what is known as a scrubber and baffles?

A. No.

Q. You don't use it in that plant, you know what a scrubber is? A. No.

Q. Well, you have heard about it—you know what baffles are? A. I know what a baffle and blade is.

Q. Well, did you use them in your plant; is not a scrubber a place where the foreign substance is taken care of and taken out of the gasoline as it goes through the compressing plant, are you familiar, how long have you been in Drumright?

A. I have been there since June, 1918.

Q. Is that since, when was the plant constructed?

A. I don't know the exact date.

Q. Well, was it just about completed at the time you took charge of it? A. Yes, sir, before.

Q. A little before? A. Yes, sir.

Q. You shipped from Drumright over the Santa Fe?

A. Yes, sir.

Q. You are familiar with the process by which the so-called casinghead gasoline is produced? A. Yes, sir.

Q. Have you ever been through there and examined the plant at Kiefer.

A. I worked in the plant at Kiefer.

Q. You worked in the plant at Kiefer? A. Yes, sir.

Q. Was a scrubber and baffles used in the plant at Kiefer?

A. I worked in the engine room at Kiefer, no scrubber in the engine room.

Q. Is that where you worked up at Drumright, in the engine room?

A. I started as engineer at Drumright.

Q. Now you are the superintendent? A. Yes, sir.

Q. You understand the construction of the plant at Kiefer?

A. In a general way.

Q. Do you know that there are not scrubbers and baffles in the plant at Kiefer?

A. I never saw inside the tanks at Kiefer.

Q. Never did see inside? A. No, sir.

Q. You know that there are not scrubbers and baffles in the plant at Drumright and Chandler?

A. I don't know that they are not.

Q. You don't know what scrubbers and baffles are?

A. I know what baffles are.

Q. You don't know what scrubbers are? A. No.

Q. Well, how do you get off your impurities that is taken up by this gas which comes through the pipes in being transported to your plant?

A. It goes through a tank.

Q. Now that tank, in that tank, the heavy ingredients are separated from the gas, is that right?

A. The heavy oil, yes.

Q. And the oil and water, that is separated from the gas?

A. Yes.

Q. And you have never heard that designated as a scrubber? A. We call them meter tanks.

Q. But that is the purpose of that tank; now do you have your baffle in there too?

A. I never saw inside of the tanks.

Q. You never saw inside of the tanks? A. No.

Q. You are not then so familiar with the construction of that plant?

A. Not the inside of the tank, no.

Q. But you know that in passing through this tank, by some process these impurities are taken from the gas, you know that. A. Yes, sir.

Q. Now then, do you ship commodities from your casing-head gasoline plant to the Gulf Refining Company, consigned to the Gulf Refining Company at Port Arthur?

A. We did.

Q. You did during what period of time?

A. Well, from the time I came there in June of 1918, until the first of 1920.

Q. Then you commenced running it through the pipe line?

A. About that time, I don't know the exact date.

Q. You quit the shipping over the railroads and commenced running it through the pipe line? A. Yes, sir.

Q. That is, through the Gulf pipe lines? A. Yes, sir.

Q. Owned by the Gulf Pipe Line Company? A. Yes, sir.

Q. And it conveys the commodity to the Gulf Refining Company at Port Arthur? A. Yes, sir.

Q. Now, did your commodity which you shipped south from Drumright to Port Arthur consist of the mixing other material that you received from Port Arthur?

A. Yes, sir.

Q. That is, the Gulf Refining Company at Port Arthur would ship it up in tank cars a certain commodity, and would take that commodity and blend it with what I call your casing-head gasoline? A. Yes, sir.

Q. And about what was the proportions of the blend at Drumright of these two commodities?

A. It varied; possibly 35% of naphtha.

Q. That is, you think it would be an average of 35% of naphtha and 65% of what I call casinghead gasoline? A. Yes.

Q. Then you put that in your tank cars and shipped it to Port Arthur. A. Yes, sir.

Q. What is the vapor tension of these south bound shipments to the Gulf Refining Company at Port Arthur?

A. Ten pounds or less.

Q. Ten pounds or less vapor tension. That is to meet with the regulations of the Interstate Commerce Commission and of the railroad tariff regulation? A. Yes, sir.

Q. That is the regulations of the Interstate Commerce Commission and Bureau of Explosives as to the shipping of inflammatory material is copied in and made a part of the tariffs, you know that to be a fact? A. Yes, sir.

Q. And this casinghead gasoline that is produced at your casinghead plant is of a higher vapor tension generally, if not always, than the ten pound pressure required by the regulations? A. Yes, sir.

Q. And you put your naphtha that you get from the Gulf Refining Company into the casinghead gasoline a sufficient quantity to lower that pressure to ten pounds vapor pressure or under? A. To help lower, yes, sir.

Q. Well, that is the purpose—that is, I mean you put it in there to lower it so you may ship it back to the Gulf Refining Company? A. Yes, sir.

Q. That is the idea? A. Yes, sir.

Q. That is, if I understand you, the Gypsy Company manufactures the casinghead gas, the Gulf Refining Company sends up this commodity which you blend with it for the purpose of shipping it back to the Gulf Refinery? A. Yes, sir.

Q. That is, the shipping blend of these commodities?

A. Yes, sir.

Q. Do you weather this blended material before you ship it? A. Yes, sir.

Q. Is that done always for the purpose of lowering the vapor tension? A. Yes, sir.

Q. Do you weather it after you have blended it?

A. Yes, sir.

Q. Do you do that all the time or just at certain times?

A. All the time.

Q. All the time. That is while it is the purpose of the material coming from the Gulf Refining Company to blend it with this to lower the tension, the vapor tension so it can be shipped back, yet in addition to that if what you put in it don't bring it down to the proper tension you weather it?

A. Yes, sir.

Q. Mr. Routh, you were served with a subpoena which requested you to bring certain papers and documents?

A. Yes, sir.

Q. And you brought them? A. Yes, sir.

Q. And you have them here present in court?

A. Yes, sir.

Q. If I understood you you were also connected with the Kiefer plant before you took the Drumright?

A. I was assistant engineer at Kiefer.

Q. Oh, how long were you assistant engineer?

A. From October, '17, till the first of May, '18.

Q. You didn't have anything to do with the shipping?

A. No, sir.

Mr. Chambers: Would you give me those papers?

(Witness delivers papers to Mr. Chambers.)

That is all.

*Cross Examination by Mr. Diggs.*

Q. What did you say your name was? A. Routh.

Q. In answer to Judge Chamber's question you spoke about taking impurities from the gas that you used for producing casinghead gasoline; as a matter of fact, the only thing you take out of this gas is water isn't it?

A. Some crude oil that might be in the line.

The Court: Some crude oil what?

A. Might come through the line.

*By Mr. Diggs.*

Q. With the exception of taking the water—

By the Court: You mean it comes through the line when they are separated the casinghead gas from the oil?

A. Yes, sir.

By the Court: Go ahead.

Q. The gas itself is not treated for any impurities, it is run through the compressor and compressed. A. Yes, sir.

Q. You make no attempt at the casinghead gasoline plant to remove anything like sulphur or any substance foreign to oil or gasoline? A. No, sir.

By the Court: Let me see—what do they attempt there to remove, water and oil?

A. Yes, sir.

Q. In other words you only attempt in the plant is to get gas in this compressor? A. Yes, sir.

Q. So it will compress and then press the gasoline out of it? A. Yes, sir.

Q. Mr. Roth you spoke something of the purpose of the Gulf Refining Company, in answer to a question of Judge Chambers, in shipping the material in which the casinghead gas is mixed you don't undertake to say you know anything of the business of the purpose of Gulf Refining Company, do you? A. No, sir.

Q. The only thing you know the Gypsy Oil Company orders certain materials and it comes and is delivered to them?

A. Yes, sir.

By the Court: Just a minute. Now this material that is shipped from Port Arthur to one of these casing plants or gasoline plants, whatever you call it, if they pay them for that material, how did they handle that on their books?

A. I don't know.

Q. You don't know? A. No.

Q. You testified, Mr. Routh, in answer to a question of Judge Chambers that the purpose of making this blend was to reduce the tension, the vapor tension of casinghead gasoline? A. Yes, sir.

Q. Is that the sole purpose of making the blend or do you know? A. As far as I know it will eliminate as much loss—

Q. Will you explain to the jury what you mean by the elimination of the loss?

A. I mean that the casinghead gasoline is so high we cannot get it down without a great loss of evaporation and we [ ] naphtha to help that process.

Q. You use naphtha not only to reduce the tension but to act as a container or conveyor or holder of the lighter qualities of the casinghead gasoline?

By Mr. Ganns: I don't believe this witness is qualified to make a statement of that kind.

By Mr. Diggs: You gentlemen got in the purpose of making this.

By Mr. Chambers: That was a physical fact. We object, the witness is not qualified.

By the Court: Test him out and see whether or not he knows and is qualified. How much experience have you had in and around casinghead gasoline plants?

A. Since October, 1917.

By the Court: October, 1917.

A. Yes, sir.

By the Court: Did you ever work in that business before then?

A. No, sir.

By the Court: What had been your business before that time?

A. I was a machinist.

By the Court: How much education in an academic way, have you had?

A. I had a high school education.

By the Court: Study chemistry in high school?

A. Yes, sir.

By the Court: Now you say what has been your position in the plant there in October, 1917?

A. I was assistant engineer.

By the Court: What did you do relative to the mixing of the blend of that process, did you have anything personal to do with that?

A. As assistant engineer.

By the Court: Yes, sir?

A. No, sir.

By the Court: Did you make any study of the effect on the blend what it was put together for?

A. No, sir.

By the Court: I don't believe he knows, unless somebody told him.

By Mr. Diggs: Does the court sustain the objection?

By the Court: I will let it go in and tell the jury in my opinion it is not worth anything.

Mr. Diggs: The defendant excepts to the remarks of the court, and requests the court to also state to the jury that the evidence of this witness in answer to the government's questions as to the purpose of making the blend the same answer.

The Court: I will except as to physical facts, like you stand and see mixing of commodities, except as to opinion. Wherever his evidence relates to anything as a matter of opinion—I will instruct you that I don't believe he knows enough about it as an expert to have any weight in my opinion.

Mr. Diggs: I request the court to specifically instruct the jury that that portion of the witness' testimony in chief saying the purpose for which the material brought

from Port Arthur was mixed, is not entitled to credit and excluded.

The Court: It isn't entitled to any credit except as he may personally know the conduct of the business for such purpose. I will permit you to examine him on that to determine how far that is competent.

*Cross Examination Continued by Diggs.*

Q. Mr. Routh, do you know all the purposes for which the material brought from Port Arthur is blended with the casinghead gas? A. How is that?

Q. Do you know all the purposes for which the material brought from Port Arthur is mixed and blended with the casinghead gasoline? A. Is used? No.

Q. The purpose of making the blend?

By the Court: I will exclude everything that is his opinion. From whom did you get your instructions as to your duty?

A. From Tulsa.

By the Court: From what officer?

A. Mr. Donovan.

By the Court: What relation did Mr. Donovan bear to the plant?

A. He was general superintendent.

By the Court: Did you have any instructions relative to the combining of those two elements or commodities whatever you call them that were shipped from Port Arthur and the compressed casinghead gas?

A. With reference to the proportion you mean?

By the Court: Yes.

A. Yes, sir.

By the Court: I will let them prove the physical facts of what they were instructed to do; that is the physical facts but as to his opinion, as to the effect, anything like that I will take that all away from the jury.

By Mr. Diggs: That includes his declaration about what the purpose was.

By the Court: Except as he may have had instructions from his superior officer. If they told him what the purpose was and that was the reason I will let him state that but not his opinion what the purpose was, and that is all excluded wherever he expresses an opinion independent of testifying to a physical fact.

*By Mr. Diggs.*

Q. Mr. Routh, do you know what the vapor tension of the casinghead gasoline produced at Drumright was as it came from the compressor and before being mixed with the blending material.

A. It varied, it would run from twenty to thirty pounds.

Q. Between those twenty to thirty pounds as a minimum and a maximum? A. Yes, sir.

Q. Do you know what the specific gravity of the material was as it came from the compressor, or about, generally?

A. Well, that would vary from 88 to 90.

By Mr. Chambers: I didn't get the last.

A. 88 or 90 I don't know exactly.

Q. 88 or 90, do you mean by that degrees by the Baume method? A. Yes, sir.

Q. Would it register between those marks, those degrees just taken in the open? A. Yes, sir.

By Mr. Diggs: That's all.

*Redirect Examination by Mr. Chambers.*

Q. Now what is the color of your liquid that comes from the compressor? A. Well it varies.

Q. Well, it varies, what do you mean by that?

A. Well, some of it is darker than others.

Q. Do you take the color of this material, what do you mean by shaking your head?

A. I have no color machine at all.

Q. You just look at it with the eye you mean?

A. Yes, sir.

By the Court: Did anybody have a color machine there?

A. No, sir.

By the Court: Does it look white?

A. Well it looks fairly white some of it.

Q. If it is colored by reason of having any oil or anything in it you don't—you cast that aside don't you?

A. No, sir.

Q. What do you do with it?

A. Ship it to Port Arthur.

Q. Now the only way it could get oil after it comes through the compressor would be from the carelessness in putting it through the compressor and the oil being on some portions of the machinery? A. It would pick up some of that oil.

Q. That would be the only oil in it the oil used in the machinery, this lubricating oil? A. Well, not necessarily.

*By Mr. Chambers.*

Q. What is the color of this blended material, material they bring from Port Arthur? A. That varies some.

Q. It is generally white?

A. Well, I could not say it is white.

Q. It is not yellow? A. No, sir, it is not yellow.

Q. It is the material you put in with the casinghead gasoline and after it is blended it is white, as a general proposition. I don't mean to say there can't be some color in it?

The Court: Let him answer the question.

Q. As a general proposition it is white? A. Yes, sir.

Mr. Swacker: I would like to make an objection because the word white is used as a technical term and can be determined only by use of a color machine made for that purpose.

Judge Williams: He has testified now he did not use any color machine and only way he tested the color was by his eyes.

Mr. Chambers: That is accepted just as far as it goes.

Q. Now did you take the gravity of those north-bound shipments? A. Yes, sir.

Q. About what was the average gravity of those?

A. About fifty-three or fifty-four.

Q. Did you take the gravity of those southbound shipments? A. Yes, sir.

Q. About what was the gravity of that?

A. They varied some, according to the blend, from seventy to seventy-five.

Q. From seventy to seventy-five?

A. Yes, sir, and possibly a little higher.

Q. What would be the general rule of the gravity of the southbound shipments?

A. Seventy-six would possibly be a fair average.

*By Mr. Diggs.*

Q. Mr. Routh, don't you mean white—when you speak of gasoline or oil being white, that is a technical term is it not?

A. Yes, sir.

Q. White then as used in the gasoline and oil business means a liquid, that will appear without discoloration on being subjected to a test of colorization?

Mr. Chambers: We object.

The Court: Do you know that of your own knowledge or by experience or experiment?

A. By experiment.

The Court: Yourself and by experience?

A. No, sir.

The Court: I don't think he has shown enough knowledge. When he testified he saw it and it looked white to him, I don't know—I take it is a term, you say technical term and takes in certain grades—now it would take an expert to swear to it.

Mr. Diggs: It seems to us he was expert enough to say it was white and then he is expert enough now to tell what white is.

The Court: I will let you ask him what he means when he says it was generally white, ask him what he means by that.

Q. You do know or do you not know whether there is a machine for the purpose of determining whether gasoline and oils are white?

A. I know there is a machine. I never had one.

Q. In the use of the term white here do you mean this material was what was known to the trade as white oil or white naphtha? A. No, sir.

Q. But you do mean to say so far as you could discover with the naked eye there was no discoloration? A. Yes, sir.

Q. It looked limpid? A. Yes, sir.

Q. It looked limpid? A. Yes, sir.

Q. And not as a white—

The Court: What do you mean by limpid?

Mr. Chambers: I don't know—

The Court: What do you mean by limpid?

Mr. Diggs: Limpid is a standard word in English meaning clear, free of obstacles and color and a crystal.

The Court: You mean it also looked white, the color was?

A. What I did mean by white is clear.

Mr. Swacker: A color distinguished from opaque.

The Court: You mean that would be transparent and could see through it? A. Yes, sir.

The Court: Without discoloration, when you say white?

A. Yes, sir, it was not black nor it was not yellow.

Q. You don't mean to say it was without discoloration, but without discoloration visible to the eye?

A. That is what I mean.

Mr. Gann: I don't think that is competent—

Mr. Diggs: You gentlemen introduced this technical term.

The Court: That is a matter, I will let you discuss that at the recess. Proceed with the witness.

Mr. Diggs: That is all.

*By Mr. Chambers.*

Q. When you say clear and white you mean it looked like water? A. As far as I can say.

The Court: Stand aside. The jury will be permitted to go now under the instruction of the court to be back here at 1:45 and you will be permitted to go and separate under the instructions of the court heretofore given you and be back here at 1:45. The audience will keep their seats as the jury passes out.

Whereupon, court took a recess until 1:45 P. M.

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#### AFTERNOON SESSION.

Whereupon, court having convened pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and the defendant announcing they were ready to proceed with the further trial of this cause, the following further proceedings were had, to-wit:

By the Court: Proceed with this case.

By Mr. Chambers: Mr. Morrison.

By the Court: Go ahead.

Whereupon, H. W. MORRISON, a witness called for and on behalf of the United States, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

#### *Direct Examination of H. W. Morrison by Mr. Chambers.*

Q. You may state your name to the jury.

A. H. W. Morrison.

Q. Where do you live?

A. I live at Bartlesville at the present time.

Q. Are you connected with the Gypsy Oil Company?

A. Not since May, 1919.

Q. Not since May, 1919? A. No, sir.

Q. Prior to May, 1919, were you connected—

A. I was connected—

Q. With the Gypsy Oil Company or the Gulf Refining Company? A. It was both.

Q. Both? A. Yes, sir.

Q. Now, where were you located at the time, Mr. Morrison? A. Tulsa.

Q. What was the connection of your employment and connection with them?

A. Well, was stenographer and chief clerk to Mr. Donovan, general superintendent.

Q. Mr. Donovan is dead now? A. Yes, sir.

Q. When did he die? A. May, 1919.

Q. May, 1919? A. Yes, sir.

Q. Do you know the position Mr. Donovan held with the Gypsy Oil Company or the Gulf Refining Company?

A. General superintendent of the Refining Company.

Q. Of what?

A. Of the Gulf Refining Company and of the Gypsy Oil Company in Oklahoma.

Q. And do you know to whom, do you know Mr. George H. Tabor? A. I do.

Q. Who is George H. Tabor, I mean with reference to his connection with the Gypsy Oil Company or the Gulf Refining Company?

A. I believe Mr. Tabor is vice president of the Gulf Refining Company.

Q. And to whom did Mr. Donovan as superintendent of these two companies report? A. Mr. Tabor.

Q. As I understand, he was superintendent of the Gasoline Department of both companies? A. Yes, sir.

Q. I refer to Mr. Donovan? A. Yes, sir.

Q. Do you know how the Gypsy Oil Company was making their shipment of their products produced at Kiefer, Jenks and Drumright, during the years, 1916, 1917, and 1918 and up until March, 1919?

By Mr. Swacker: I desire to object to that question and the answer to it for the reasons, first because how they were shipping is a written document and the bills of lading would be the best proof, and second we have been over that and third going back of the dates in the indictment.

By the Court: Read the question.

(Question read.)

By the Court: I will let you prove that but produce these papers now. They object on the ground it is in

writing and I will permit you to introduce those papers like you did yesterday.

By Mr. Chambers: Well can't I prove by this—

By the Court: No, you will have to prove it by the record, they object to it.

By Mr. Chambers: Well, he is not—

By the Court: Show him the records and let him identify them.

By Mr. Chambers: What knowledge he would have would be his knowledge derived from his position as chief clerk in the main office or the office of the superintendent of these plants.

The Court: If they are going to raise the question that papers are the best evidence, then I will let you go into that and introduce the records.

Mr. Payne: All right, we will introduce them by another witness.

Mr. Chambers: Will you permit me to ask another question along that line?

The Court: Yes.

Q. Do you know the name under which these commodities were shipped prior—from Drumright, Jenks and Kiefer—prior to December 2, 1916, and do you know whether at that date, or after, your office gave directions with reference to the manner in which they should be shipped after that time?

A. I do not remember.

By Mr. Swacker: If your honor please, with reference to my objection, I am not trying to be technical in reference to the written papers.

The Court: But you have made an objection on that ground.

Mr. Swacker: Yes, and on the further ground the fact is all proven and this is accumulative. We are willing to make an exact admission of what these papers will show.

The Court: Well, yes, but see here, on cross examination of this witness you went on to show that in some instances it was shipped as unrefined naphtha and in other instances as casinghead gas naphtha. Now, you show the different ways it is shipped, they are entitled to do the same thing, so it is not accumulative because you offered evidence tending to show it was shipped a different way other than refined naphtha or casinghead gasoline and in

addition to that you objected to it on the ground the paper is the best evidence, and where that objection is made I will sustain it and require them to introduce the paper.

Mr. Chambers: Do I understand you sustain an objection to the question I asked?

The Court: He said he did not know.

Q. Do you know the name under which this commodity from Kiefer was shipped to Port Arthur prior to the 2nd day of December, 1916? A. I do not know.

Q. I understand you don't know what the name was under which any of these shipments were billed from Kiefer and Jenks or Drumright to Port Arthur?

A. That is my statement.

Q. That is, from Drumright to Port Arthur?

A. That is my statement.

Q. That is all with the witness.

Mr. Diggs: If the court please, in order to save time—

Mr. Chambers: Just pardon me a moment, there is another proposition.

Mr. Diggs: All right.

Q. Did your office receive a letter from Mr. Ellis, do you know what position Mr. Ellis occupied with reference to the Gypsy Oil Company and the Gulf Refining Company?

A. I believe he was their traffic manager.

Q. Traffic manager for both companies?

A. Yes, sir, I believe he was.

Q. Did you receive a letter while in the office, or prior to December 2nd, 1916, from Mr. Ellis, directing you as to how you should ship the commodity from—

The Court: If you have the letter show it to him.

Mr. Chambers: I have not got it.

The Court: Did you serve notice on them?

Mr. Chambers: We served the subpoena.

The Court: You may ask him then.

A. Not to my knowledge. If we did, Mr. Donovan may have received it, I do not remember seeing it.

Q. Do you remember receiving a letter from Mr. Ellis?

A. No, sir, I got my instructions from Mr. Donovan.

Q. Well, did—you got instructions from Mr. Donovan as to how to instruct these superintendents or assistant superintendents at these various points?

A. Sometimes when he didn't instruct them himself. If

he received such a letter he may have re-dictated it to me and I didn't know the source of his information.

Q. Do you remember instructing the superintendents with reference to the manner in which they should ship this commodity?

A. We had various instructions from time to time. I don't remember of any one instance, no.

Q. You haven't charge of the correspondence of Mr. Donovan's office now? A. No, I haven't.

Mr. Diggs: If the court please, I started to make the statement—we have already admitted that prior to the date the tariff went in for shipping the certain commodity known as unrefined naphtha that this commodity was shipped as gasoline to all points where that tariff was not in force and effect. I assume that is what the government is attempting to prove. If that is so, it is admitted.

By the Court: I don't know what they are after, but this morning you sought to prove, and I believe one witness did testify that that was also billed in some instances as casinghead gasoline and naphtha. If they show it was billed as anything else in due course of business, that would be competent.

Mr. Diggs: We are admitting, if the court please—

Mr. Swacker: The answer to that is this, the witness had testified that after December, 1916, it was billed as unrefined naphtha only. On cross examination we caused him to qualify that testimony by showing that after a certain period, there was added in addition to the description, "unrefined naphtha" on those shipments, the term "casinghead naphtha" as well.

The Court: What they offer would be competent except they were asking about what would be in bills of lading or written shipping instructions, and the objection was made on the ground that the papers would be the best evidence and I sustained it on that ground, and not on the other ground; that it was a repetition, might or might not be.

Q. Mr. Morrison, I want to ask you, probably you didn't understand my question. Mr. Donovan received a letter from Mr. Ellis with reference to the directions giving to Mr. Donovan directions with reference to how these shipments were made?

A. I believe I answered that statement to my knowledge I could not say.

Q. Well, possibly he did.

By the Court: Have you any recollection about it?

A. I have no recollection seeing such a letter.

Q. To refresh your recollection didn't you state to Mr. Stewart a short time ago that such a letter was received?

By Mr. Swacker: I object to that it is an effort to impeach his own witness.

By Mr. Chambers: Just to refresh his memory.

A. I say I may have made such a statement but I don't remember seeing any such letter.

By the Court: What is your best recollection about it?

A. I said that Mr. Donovan might have received such a letter but I don't recollect having seen it.

By the Court: Who opens the mail?

A. Mr. Donovan opens some of it.

By the Court: Mail addressed to Mr. Donovan, who opened it?

A. Mr. Donovan opened it.

By the Court: Did you handle any of it?

A. Some of it.

By the Court: Now what is your best recollection of such a letter having been received by him, have you any recollection at all on it.

A. No, I have not.

By the Court: Have you ever had any recollection at all on it?

A. I have not.

By the Court: Take the witness:

*Cross Examination of Mr. Morrison by Mr. Diggs.*

Q. Mr. Patterson—

By Mr. Payne: Mr. Morrison his name is.

Q. Mr. Morrison, I mean, you stated something about the gasoline plant of the Gypsy Oil Company and the Gulf Refining Company you know where the Gulf Refining Company ever had a casinghead gasoline plant or ever had a casinghead gasoline plant in—

A. Pardon me, I did not get the statement.

Q. You stated that Mr. Donovan was in charge, superintendent of the gasoline, casinghead gasoline plant of the Gypsy Oil Company and the Gulf Refining Company, does the Gulf

Refining Company in Oklahoma have any casinghead gas plants?

A. Not in Oklahoma, the Gypsy Oil Company has in Oklahoma.

Q. You know of any place which the Gulf Refining Company has a casinghead gasoline plant?

A. I was under the impression they did have in Texas and Louisiana.

Q. That is your impression but you don't know?

A. That is my impression.

Q. You also spoke of Mr. Ellis being traffic manager of the Gulf Refining Company and the Gypsy Oil Company, do you know Mr. Ellis occupied any position under the Gypsy Oil Company?

A. No, I don't know that he does.

Q. That's all.

By the Court: Did the officers of the Gypsy Oil Company receive any instructions from him?

A. I could not say as to that, none other than Mr. Donovan.

By the Court: Did Mr. Donovan as an officer of the Gypsy Oil Company receive instructions and directions from Mr. Ellis?

A. He did.

(Witness dismissed)

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By Mr. Chambers: Call Mr. Joseph P. Manson.

Mr. Chambers: Mr. Reporter, identify these please as Exhibits 5, 6, 7, 8, and 9.

(Whereupon, said exhibits are identified by the reporter as requested.)

Whereupon, JOSEPH P. MANSON, produced as a witness on behalf of the Government, having been first duly sworn took the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Manson by Mr. Chambers.*

Q. State your name to the court and jury.

A. Joseph P. Manson.

Q. Where do you live? A. Muskogee.

Q. What is your business?

A. Chief clerk with the American Railway Express.

Q. Were you ever connected with the Gypsy Oil Company?

A. I was.

Q. And when were you connected with the Gypsy Oil Company?

A. In September and October, 1916.

Q. September and October, 1916?

A. I believe that is when it was.

Q. Were you also connected with them in November, 1916?

A. I believe so.

Q. I am handing you papers identified by the stenographer as Exhibits 5, 6, 7, 8, and 9 and ask you what they are and if you signed them? A. Yes, sir, I did.

Q. What is the date of Exhibit No. 5?

A. November 2nd.

Q. And what is the date of Exhibit No. 6?

A. November 4th.

Q. And what is the date of Exhibit No. 7?

A. November 7th.

Q. And Exhibit 8?

A. November 11th, I didn't sign that one marked Exhibit 8.

Q. What are those papers, the general term?

A. They are bills of lading.

Q. They are bills of lading? A. Yes, sir.

By the Court: Who signed Exhibit No. 8, if you know?

A. Mr. Millard.

By the Court: Who?

A. He was superintendent, assistant superintendent.

Q. Do you know his handwriting?

A. Yes, sir, I believe that is it.

Mr. Chambers: We will offer these in evidence, if the court please.

The Court: Show them to the other side.

Q. What was the year? A. I believe it was 1916.

Mr. Swacker: We desire to object to these as being incompetent, irrelevant and immaterial, they being matters not properly proven as under similar circumstances and conditions, but on the contrary the evidence already in the case showing a different set of circumstances and conditions surrounding it.

The Court: What is that they are offering?

Mr. Swacker. They are shipments before December 2, 1916.

Mr. Chambers: And shipped as gasoline.

The Court: I will admit them.

Mr. Swacker: Exception, please.

Mr. Chambers: May I ask the court, will it be proper instead of reading these—

The Court: They may be considered read and you may call attention to them later.

Mr. Chambers: Then they can be considered as read?

The Court: They may be considered as read. They are only admitted for the purpose of showing the conduct of the business.

Mr. Chambers: That is all.

The Court: And the evidence is already in and the only reason I admit them now is because there was an objection to them and then I am going to instruct the jury they are not to give undue importance to this evidence; that is the reason I excluded them you know.

Mr. Chambers: Of course we have other evidence in connection with that.

The Court: The defense by their objection brought the admission of the papers themselves on themselves,

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Whereupon, MR. RIEDEMAN was re-called to the stand for further direct examination:

*Further Direct Examination of Mr. Riedeman  
by Mr. Chambers.*

Q. You were on the witness stand yesterday and testified in this case? A. Yes, sir.

Q. Your name is Riedeman? A. Yes, sir.

Q. I am handing you a bunch of what purports to be shipping orders and embracing ten shipping orders, marked yesterday as Exhibit 2, and I will ask you to state if those shipping orders were made out by you while you were in the employ of the Gypsy Oil Company? A. They were.

Q. And those were shipments made from—well, I don't know, where were they made from?

A. I will have to look at those.

Q. I don't know where to look.

A. From Kiefer to Port Arthur.

The Court: Where were the other shipments, that other batch from?

Mr. Chambers: Kiefer, Oklahoma, it states there.

The Court: Where to?

Mr. Chambers: Kiefer, Oklahoma, to Port Arthur. Now we will offer these in evidence.

Mr. Swacker: We desire to make the same objection to these as being matters res inter alia, and no proper foundation laid for the introduction, the circumstances already in evidence showing that the rates were different at the time these shipments were made, all being before December 2, 1916.

The Court: I will permit them to be introduced.

Mr. Swacker: We except.

The Court: To show the conditions, and I will instruct the jury later on, and they may be marked and considered as read. Of course, when the question arises and where all the evidence is in, if there is a theory reasonable and in accordance with all the evidence the contention of the defendant as to the change, then that will destroy any evidential presumption that may be raised in favor of the government. I will cover that in instructions later on.

Mr. Swacker: I except.

Mr. Swacker: We may have an exception.

The Court: Very well.

Mr. Chambers: Cross examine.

Mr. Diggs: No questions.

Witness excused.

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Whereupon, FRANK ARCHIBALD TIMMONS, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name.

A. Frank Archibald Timmons.

Q. Where are you employed?

A. Gulf Refining Company, Port Arthur.

Q. What is your position with the Gulf Refining Company at Port Arthur, Mr. Timmons? A. Now!

Q. Yes? A. I have charge of all bulk shipments.

Q. What was your business prior to that?

A. Pump house foreman.

Q. How long were you pump house foreman, Mr. Timmons?

A. I suppose eleven years, I just don't remember, about eleven years.

Q. Ending when? A. August last year, 1919.

Q. As pump house foreman, what were your duties, Mr. Timmons?

A. To see that the oil was properly transferred from storage tanks, agitators, crude tanks and all oil put in proper tanks.

Q. Did you have charge of the unloading from cars received at Port Arthur to the various tanks in the refinery there? A. Yes, sir.

Q. Referring now to shipments from Kiefer, Jenks and Drumright, when those cars arrived at Port Arthur and were placed for unloading, what did you do first in reference to those cars?

A. Well, when the cars were first put on the rack I checked my list to see that the cars corresponded with the cars enroute from these different plants.

Q. Go ahead.

A. Then if we found that the cars on the rack checked with my list we immediately began to get ready to unload.

Q. To get ready to unload? A. Yes, sir.

Q. How did you determine to what tank in the plant the contents of the car would be pumped to?

A. Let's see now, just what do you mean?

Q. Did you make any tests of the contents of the cars from the three points I have mentioned in order to determine what tank you would pump them to?

A. Not necessarily, I did not but the laboratory did.

Q. Who took the sample from which the test was to be made? A. The laboratory boy.

Q. So that upon the arrival of a car and placed there upon your unloading rack the sample would be taken from the car.

A. Each and every car.

Q. And sent to the laboratory? A. Yes, sir.

Q. What tests would be made at the laboratory?

A. Well they test them for gravity and color and then average of the cars would be run for distillation.

Q. Were you advised of the results of the tests made in the laboratory?

A. Either made a practice of going there or calling up.

Q. Mr. Timmons, will you state what tank No. 805, 838 and 857 are used for at Port Arthur?

A. For the storage of unrefined naphtha, for the storage of painters naphtha, storage of a mixture of them all whatever needed for.

Q. Assuming the test of the cars from the three points I have stated were satisfactory, to what tank would the contents of those cars be pumped?

A. What do you mean by satisfactory?

Q. I mean satisfactory according to your own standard?

A. That is only a question just wherever we had room and whatever shipment I was getting ready for.

Q. What would determine you as to what tank you would pump the contents into?

A. That all depended on what I was making.

Q. If you received a car that was off color, what tank would that be pumped into?

A. Now how badly off color.

Q. What you considered off color.

A. That would go into 829 tank.

Q. 829? A. Yes, sir.

Q. What is that tank called? A. Crude naphtha tank.

Q. Was everything that was put into that tank—strike that out—what treatment was given to the crude naphtha that was pumped into that tank No. 829?

A. No treatment at all.

Q. What was your purpose in pumping it into that tank?

A. For re-running it.

Q. What do you mean by re-running it?

A. Put it back in a steam still.

Q. What determines you as to whether you would pump the contents of the car from Kiefer, Jenks and Drumright to the tanks 805, 838 and 857 or 829.

A. Well if you wanted, when it went into 805, 838 or 857 that all depended on what I was making what specification I was making, if it went into 829 it was off color and had to be re-run.

Q. Did you re-run any of the liquid that was put into tank 805, 838 or 857? A. I, no I haven't.

Q. Is the distinction this, that the fluid that was pumped into tank 829 was run through the still later? A. Yes, sir.

Q. The stuff pumped into tanks 805, 838 and 857 was merely blended? Is that correct? A. Yes, sir.

Q. Mr. Timmons, what percentage of the cars received from Kiefer, Jenks and Drumright were pumped into tanks 829?

A. I shouldn't, I didn't figure that up, but it was very small; I wouldn't consider it over—I would have to figure back. I don't know how many cars went through there in that length of time, but I would consider it very small, maybe two per cent; I would say not that much just depends.

Q. Mr. Timmons, did you keep a record of the cars unloaded by you? A. Yes, sir.

Q. Was that record kept by you personally or under your supervision? A. Yes, sir.

Q. What did that record show Mr. Timmons?

A. Well, just showed the car number and the capacity and where she was consigned from and what tank it went into.

Q. Did it show the number of the freight bill?

A. I added that to it, yes, sir.

Q. What was the purpose of showing the number of the freight bill in that record?

A. I had a little trouble with the auditing department. We had a form to go into the office. They would call up and say they didn't get a tank car consigned from a certain place. It was for my protection. They were on my neck all the time. I would say here you are if you haven't got it alright, somebody else has to straighten it out and not me.

Q. When you unloaded the cars did you O. K. the freight bill that was submitted to you by the railroad, that is, O. K. it for payment? A. O. K. it for what?

Q. Payment? A. No, sir.

Q. Did you advise someone else that the cars had been received in order that the freight charges might then be paid?

A. This slip that went into the auditing department, beyond that I knew nothing about it. That did not concern me at all.

Q. But was it the practice of your company not to pay the freight charges until you had given them a record that the cars were received?

A. I don't know whether that was the practice or not, I don't know.

Q. Mr. Timmons, was anything done with the contents of tanks 805, 838 and 857 other than to blend it?

A. Blend it—not to my knowledge.

Q. Mr. Timmons, I show you Government Exhibit No. 10 for identification, and will ask you to state what that is?

A. That is my book that I put these unrefined naphtha cars in; it is the form that I used.

Q. That is your own record as to the receipt of the cars at Port Arthur? A. Yes, sir.

Q. Is that the record that also shows the dates unloaded, and the tank into which the contents were pumped?

A. Yes, sir.

Q. Referring to car No. 1030, unloaded on January 3, 1917, will you state the number of the tank into which the contents of that car was pumped? A. What date?

Q. January 3rd, 1917.

Mr. Payne: That is a car in Count Number One in the indictment, your honor.

Mr. Swacker: What car number?

Mr. Payne: 1030.

A. When did you say it was pumped, when did you say it arrived here.

Q. January 3rd, 1917.

A. There is no record here in this book. I don't see any. You will have to find it for me. No, this 1916, isn't it?

Q. That is in there.

Mr. Payne: May it please the court, it would naturally take a great while for this witness to take up each of these cars, one by one, it is quite important however in our case to show the number of the tank into which the contents were pumped, in order for us to show what happened to the contents of the car after it arrived, and I move the court to order this witness to take this list and check up his books so that he will be prepared to testify in a very brief space of time the numbers of the tanks.

The Court: Is there any objection to this witness being withdrawn so he can refer to these entries made?

Mr. Diggs: No, there is no objection, I don't believe it can be done in a short time, and we will admit all the cars in the indictment received there were put into these tanks.

The Court: They want to prove the identical tank they were put into.

Mr. Payne: It will not take this gentleman over half an hour to go over that.

Mr. Swacker: Suppose you ask the witness, I don't think it can be done in anything like that time.

Mr. Payne: How long would it take you to check up these numbers?

A. Just depends, I have worked over sometimes thirty or forty cars in a half an hour. If there is more cars than that I could not do that in that time.

Q. How long will it take you?

A. All the afternoon.

Mr. Payne: All the afternoon. Well, that is not very long. Is there any objection to that procedure?

Mr. Diggs: None on my part, if the witness doesn't object, I don't.

The Court: Very well.

Mr. Diggs: The government has named certain tanks which Mr. Timmons has testified to.

The Court: All of them were put into one or the other of the four tanks.

Mr. Payne: Not these cars in the indictment. We will show none of that went into 829.

Mr. Swacker: We will concede that. I do not know the fact but we will concede that it may be, that no part of the cars mentioned in the indictment went into 829 and that all the other cars went into some of these three tanks.

Mr. Payne: Will you concede that not one of the cars mentioned in the indictment were not further refined?

Mr. Swacker: I certainly will not.

Mr. Payne: Will you concede that all the cars were merely blended?

Mr. Swacker: We will not make that concession but we insist that blending is refining.

The Court: Will the concession that all the cars were put in tanks other than 829 be made?

Mr. Payne: Provisionally. There is no reason I think of now why that is not all right. With the reservation that we may call this witness back to show that car by car, it may be.

By the Court: There is one thing I want to know for myself, now a shipment from Kiefer to West Port Arthur consigned to Port Arthur. Is West Port Arthur between Kiefer and Port Arthur. Is it stopped in transit. How does it get to Port Arthur on a consignment to the Gulf Refining Company at Port Arthur?

A. Port Arthur is the terminal of the Kansas City Southern Railroad and West Port Arthur is about two miles from the city proper, just a spur runs around to the refinery.

By the Court: Then a shipment that is consigned to the consignee at Port Arthur, this refining company at Port Arthur, is it dropped in transit at West Port Arthur from this point?

A. No, it goes through Port Arthur and then goes out to the refinery.

By the Court: You mean it goes to Port Arthur and then they switch it out to the other place?

A. (No answer.)

By the Court: There are two railroads over there?

A. We are consigning over the K. C. S. There are four or five different ways to get them in there but this is consigned K. C. S.

Q. Mr. Timmons I understood you to say that you had charge of the pumping? A. Yes, sir.

Q. Now would it be possible for any further refining to be done of the contents of tanks of 805, 838 and 857 without the pumping appearing in your records?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and calling for a conclusion of the witness and not a statement of facts.

By Mr. Payne: How so?

By the Court: Now that might be competent as a reason what do you offer this for?

By Mr. Payne: To show that no further refining was done of any of the cars enlisted in the indictment.

By the Court: I don't think that is competent for this reason. Now this book is not being offered in evidence the way I understand it. This book is tendered to the witness for the purpose of refreshing his recollection.

By Mr. Payne: I was going to offer these, I overlooked them.

By the Court: I don't think the book is competent for any purpose.

By Mr. Payne: Except to show unloading and the number of the tanks into which it was pumped.

By the Court: I don't think the books are competent to prove that.

By Mr. Payne: This is a contemporaneous record made by the man who knows and aside from that it is an admission by the defendant. Here is the defendant's own record.

By the Court: I don't think so—

By Mr. Payne: Your honor, that seems to meet every test of documentary evidence.

By the Court: I don't think so.

By Mr. Payne: Here is an original record made in the regular course of business contemporaneously with the fact itself.

By the Court: I don't understand the rule so to be. If you have any authorities to show me the book is evidentiary itself—

By Mr. Payne: It is admissible under the shopkeepers book rule. The shop book where a man—

By the Court: There is no use talking I will not admit the book unless you show me some authorities.

By Mr. Payne: We will get them, there are a lot of authorities.

By the Court: That book, that book, used to refresh his memory and you can make him your witness and tender him this book and ask him the reason why and if he was an unfriendly witness you can use it as a surprise on him but now under the common law rule there was certain limitations to get a shop keeper's book out and that had to be the basis and it looks to me like this is a collateral matter and an incidental matter.

By Mr. Payne: I will say it is not so material to get this in now but they have admitted every car in the indictment went into one or the other of these tanks but at the same time that admits the delivery of these cars in the indictment. Now it is unnecessary for us to prove that they were delivered and received there. Now we will have to show the freight charges were paid on the basis of the lawful tariff rates.

By Mr. Payne: I ask leave of the court to excuse this witness temporarily so we can recall him.

By the Court: You can recall him and then he will be tendered to the other side for cross examination and he will be recalled for that purpose and notation made to that effect and if they overlook it the other side has the privilege of demanding he be recalled for that purpose.

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By Mr. Chambers: If the court please, I don't know just exactly what the conditions are, as I understand it, we asked for certain records and the court ordered those records to be delivered to us.

The Court: You have got the subpoena.

Mr. Chambers: And they haven't been delivered to us.

Mr. Diggs: Which records are you speaking now of?

Mr. Payne: All of them.

Mr. Chambers: The records I have given you the subpoena in regard to.

Mr. Diggs: You have given two; which do you want?

Mr. Chambers: Both of them.

The Court: Take your record and specify.

Mr. Chambers: He said two of them, both of the subpoenæs.

Mr. Diggs: Here are the papers (indicating) that we produce in answer to subpoena duces tecum of the Gypsy Oil Company, with the exception these papers do

not include the oil and gas mining leases of the Gypsy Oil Company and of the papers you have, Mr. McGraw? These contain all the papers of the Gypsy Oil Company, itself, and all communications.

The Court: Get your subpoena duces tecum and outline what you want. Let's have a little system about it.

Mr. Chambers: We gave the subpoena to them. I will read it off.

Mr. Diggs: That is the Gulf Refining Company.

The Court: Proceed; proceed, gentlemen.

Mr. Chambers: First, we want a copy of the order of the Gypsy Oil Company to make shipments from the Gulf Refining Company.

The Court: Very well, have you got that?

Mr. Swacker: The witness is out under the rule that has charge of the papers.

The Court: Send for him. Proceed now. Read off what you called for.

Mr. Swacker: This first item that is called for is one by its terms in the possession of the Gypsy and on the Gypsy subpoena.

The Court: Well, if they haven't got them they cannot produce them.

Mr. Gann: Very well, I will read them. Original bill of lading, original invoice—

The Court: Let's get them as you call for them. What original bill of lading now?

Mr. Payne: May it please the court, I just want to make a suggestion to conserve time.

The Court: No, I will conserve the time. Neither one of you are time savers. Go ahead.

Mr. Gann: These are shipments to Pittsburgh.

Mr. Swacker: The trouble with that is, it is in the possession of the Gypsy.

Mr. Gann: No, it is in the possession of the Gulf. The following documents in the possession of the Gulf Refining Company, shipped to Shady Point, Pennsylvania.

By Mr. Swacker: The papers referred to in that connection were burned with the destruction of the plant at Shady Side, Pittsburgh, but there are in the possession of the Gypsy Company and covered by its subpoena the counterpart papers of the same document.

By Mr. Chambers: That is satisfactory.

By Mr. Gann: If we can understand what was burned we can introduce the secondary evidence.

By Mr. Swacker: All of them.

By the Court: They say they have the counterpart, in the Gypsy. Produce them.

By Mr. Gann: First here is copy of order of Gypsy Oil Company to make shipments—

By Mr. Swacker: These are not copies but originals, what was called for on the Gulf subpoena, was a copy retained by the Gulf.

By the Court: These are the Gypsy's originals.

By Mr. Swacker: Yes, sir.

By the Court: The others are originals, too.

By Mr. Gann: The original bill of lading.

By the Court: The way I understand they are copies, both original, called for in each subpoena and the delivery of one exonerates the other unless there is some special reason to the contrary.

By Mr. Gann: The original invoice of the Gypsy Oil Company to the Gulf Refining Company covering these cars.

By Mr. Swacker: Now there are five bundles of papers each of which contain a number of other items besides the items called for on the subpoena. The items called for on the subpoena. The items called for are indicated by red pasters which are attached to the particular bill. I think the numbers of those call for in order to avoid confusion perhaps had better be put on the record they are numbers B1815, S1982, S1973, H1973, and F1996.

By Mr. Gann: Fourth, original showing tank at Shady Side into which the gasoline was unloaded.

By Mr. Swacker: Those were among the records destroyed by fire, so far as anybody has been able to find out.

By Mr. Gann: Fifth, original record showing gravity temperature, and color and other tests at the time of unloading the car at Shady Side.

By Mr. Swacker: The same reply to that.

By Mr. Gann: Destroyed by fire. Six, original records showing transfer from tank referred to in paragraph 4 to the blending tanks.

By Mr. Swacker: All those Shady Side records were destroyed by fire.

By Mr. Gann: No. 7. Original record showing percentage of Kiefer gasoline, blended with other gasoline at Shady Side.

By Mr. Swacker: Same as the other.

By Mr. Gann: All of these then. That is all on the Gulf side which we require.

By Mr. Swacker: We have here sort of a secondary record on that subject which we do not object to furnishing which was made by a manager apparently co-incident to the sale to the department.

Mr. Gann: To the extent of the information shown in here, you are complying with this subpoena by supplying these documents?

Mr. Swacker: No, the documents called for by the subpoena are destroyed. Simply voluntary.

Mr. Gann: These are the records asked for by subpoena duces tecum from Gypsy Oil Company, Tulsa, Oklahoma, the following documents covering shipments of unrefined naphtha from Kiefer, Oklahoma, to Port Arthur, Texas, and shipments of gasoline from Kiefer, Oklahoma, to Shady Side Station, Pennsylvania, in the cars listed below.

Mr. Diggs: The Shady Side part is already delivered to you.

Mr. Gann: Now, as to the Port Arthur.

Mr. Swacker: If there is any such thing as that. There is a record that somewhat answers that description but it seems to me it would have to be explained by a witness.

The Court: Well, you can show what you have and I will pass on it.

Mr. Swacker: What we refer to as being the nearest analogous thing called for in the subpoena are five bunches of engineer's reports, so denominated, I will say, however, they do not answer the description in the subpoena at all.

Mr. Gann: Original record showing the tank in which the casinghead gasoline was taken, also gravity, temperature and color when taken.

Mr. Swacker: In so far as there is such a record, it is in the papers I handed you.

Mr. Gann: Covered by paragraph No. 1, Third, original records showing the percentage of gasoline of the percentage of casinghead gasoline in the cars when loaded.

Mr. Swacker: The same is true as to that.

Mr. Gann: Covering paragraph one. Four, original records showing gravity, temperature and color and the test when loaded.

Mr. Swacker: The same is true as to that.

Mr. Gann: Fifth, original records showing tanks in which—from which loaded into the car.

Mr. Swacker: The same is true as to that.

Mr. Gann: Sixth, duplicate of original shipping orders to agents.

Mr. Swacker: You have already received it in the Gulf subpœna; put it in where it belongs.

Mr. Gann: Seventh, original order of the Gulf Refining Company to the Gypsy Oil Company to make shipments.

Mr. Swacker: You have already received those on the Gulf subpœna.

Mr. Gann: Eighth, copy of invoices to the Gulf Refining Company.

Mr. Swacker: We produced in response to that a bundle of invoices, marked No. 9 Kiefer, 1917, embraces more than merely the invoices called for in this item of the subpœna, embracing other items called for later in the subpœna and the whole are produced in order to be kept in order and will be found when called for later.

Mr. Gann: Also the following documents covering shipments of naphtha and crude unfinished naphtha brought from Port Arthur, Texas, to Kiefer, Drumright, Shamrock, Cleveland and Jenks, Oklahoma, from November 1, 1916, to June 30, 1919, as follows: One, original invoices of the Gulf Refining Company.

Mr. Swacker: Those papers consist of a monthly voucher for each month, beginning with the month of November, 1916, and continuing to and including the month of May, 1919, being monthly settlements.

Mr. Gann: Second, copy of order to the Gulf Refining Company to make shipments.

And thereupon the jury was excused from the court room at their request, and the following proceedings were had in the absence of the jury:

Mr. Swacker: Those consist of periodical orders by telegram, these copies of such telegrams, nine in number.

Mr. Gann: Third, original and duplicate shipping orders to railway agents.

Mr. Swacker: That is not in the possession of the Gypsy at all. Naturally not in the possession of either of them; in the possession of the railway company. There is only one shipping order that we know anything about. We have bills of lading but we don't have any shipping order.

Mr. Gann: Very well, the bills of lading.

Mr. Swacker: That is in the possession of the Gulf. We haven't those here yet.

Mr. Gann: Fourth, original record showing tank into which the product was unloaded on arrival at destination, as shown above.

Mr. Swacker: As far as there is such a record it is embraced in those engineering reports. There are additional reports covering all periods of time. He called for November 1, 1916, to June 30, 1919, Kiefer, Jenks and Drumright; the subpoena was for Kiefer, Drumright, Cleveland and Jenks. There are no counts in the indictment from Shamrock and Cleveland. Certainly entirely irrelevant to this case.

The Court: Well, I will pass on them when they are offered.

Mr. Gann: Original record showing gravity, color and other tests at the time of the arrival at original destination.

Mr. Swacker: As far as there is such a record it is embraced in those engineering reports.

By Mr. Gann: Also the following documents covering shipments of gasoline, unrefined naphtha, casinghead naphtha, and casinghead gasoline from Kiefer, Drumright and Jenks shipped by the Gypsy Oil Company gasoline department to the Gulf Refining Company, Port Arthur, Texas, from November 1st, 1916, to June 30, 1919, as follows, first: Original records showing tanks from which a blending material was taken, also original record showing the gravity and temperature and color when taken.

By Mr. Swacker: As far as that exists they are in the engineer's report.

By Mr. Gann: Original record showing tanks from which casinghead gasoline was taken and also original records showing gravity, temperature and color when taken.

By Mr. Swacker: The same is true as to that.

By Mr. Gann: Third, original record showing the percentage of blending material and the percentage of casinghead gasoline in cars when unloaded.

By Mr. Gann: Fourth, original record showing gravity, temperature and color and other tests when loaded.

By Mr. Swacker: The same is true as to that.

By Mr. Gann: Original record showing tank from which loaded into cars.

By Mr. Swacker: That is the same.

By Mr. Gann: Sixth, copy of invoices from Gulf Refining Company covering shipments.

(Whereupon the jurors are returned back into the court room.)

By Mr. Swacker: Part of those called for have already been produced being called for by one of the previous sections of the subpoenæs.

By Mr. Gann: Also report of the superintendent of the casinghead gasoline plant.

By Mr. Swacker: That consists of six more books of invoices similar to the books under the first called for invoices.

By Mr. Gann: Also reports of the superintendent of the casinghead gasoline plant at Jenks, Kiefer and Drumright, showing daily and monthly from the period November 1, 1916, to May 31, 1919, first, number of feet consumed in the manufacture of casinghead gasoline, second, number of gallons extracted per one thousand feet of that—cubic feet. Third, gravity and color and temperature of blend, where and from whom the gas was purchased. Fifth, where the gas was manufactured into gasoline.

Whereupon, the jury returned to the court room, and upon being found all to be present, the following further proceedings were had in the presence of the jury:

Mr. Gann: Also original duplicate of leases and casinghead gas contracts with incompetent Indians on lands owned by them and under the jurisdiction of the superintendent of the Five Civilized Tribes on November 1st, 1916, to May 31st, 1919, covering the manufacture of gasoline, casinghead gasoline, unrefined naphtha and casinghead naphtha at Jenks, Kiefer and Drumright, Oklahoma.

Mr. McGraw: I have with me all the documents covered by said paragraph in the subpoena, and we don't have in our files any contracts as such between the Gypsy Oil Company and restricted Indians fixing the rate of royalties and providing for the compensation for the royalties for casinghead gas.

Mr. Diggs: You use the word "restricted Indians" to include and cover the word "incompetent Indian" as mentioned in the subpoena?

Mr. McGraw: Yes, sir. I have with me the original oil and gas leases under which the company operates these restricted Indian lands. I also have with me the contracts with the restricted Indians under which the plant is operated on one of the Indian allotments. I have with me our files, office files showing the copy of the statement and a letter transmitting royalties to the superintendent of the Five Civilized Tribes on account of the casinghead gas removed from restricted Indian lands.

Mr. McGraw: We have no map defining the location and boundaries of the sites on which the casinghead gasoline plants are situated. I can from memory or blue print specify where they are.

Mr. Diggs: The Gypsy Oil Company at this time produces, in answer to the subpoena duces tecum, the oil and gas mining leases between it and the incompetent Indians. Also copies of the reports to the Indian Superintendent, but will not surrender possession thereof unless so directed by the court; for the reason that it is apparent from the face of the indictment and the subpoena duces tecum in this case, it can have no possible bearing on the issues raised herein and can only be desired for the purpose of prying into the private affairs of the Gypsy Oil Company; as being incompetent, irrelevant and immaterial to any issues raised in this cause.

Mr. Gann: May it please the court, it is obvious that the government does not wish to inquire into the private business of any corporation, particularly the Gypsy Oil Company and the Gulf Refining Company. The question as to the production of these records has been previously raised by the motion of the defendant, and it is the understanding of counsel for the government that your honor has already decided that question.

The Court: Oh, no.

Mr. Diggs: The court said we could produce them and he would pass on them at the time of their production.

The Court: I will pass on that question now. These are matters of record you could have gotten out of the United States Indian Agency office!

Mr. Gann: Part of them.

The Court: Most of them.

Mr. Gann: These records are subpoenaed from the Gypsy Oil Company, whose headquarters are here in the City of Tulsa.

The Court: I will not require—I will let you inspect them but I will not require them to turn them over to you.

Mr. Diggs: If the court please, the Gypsy Oil Company objects to the order permitting the inspection and now offers Mr. McGraw, the vice president, to produce each of these leases and submit this to the inspection of the court, if it answers their purpose.

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Whereupon, HENRY McGRAW, produced as a witness, and being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Mr. Diggs: The Gypsy Oil Company now offers for use, by Mr. McGraw, as vice president, any particular oil and gas mining leases covering restricted Indian land that the government may ask for, for submission to the court on the question of relevancy.

The Court: Very well, proceed.

Mr. Gann: The government desires the production of these records for the purpose of showing—

The Court: Well, call for the one you want.

*Examination by Mr. Gann.*

Q. Mr. McGraw, have you produced under subpoena duces tecum the records called for by the paragraph reading as follows: "Also original duplicate of leases and casinghead gas contracts of incompetent Indians, on lands owned by them and under the jurisdiction of the Superintendent for the Five Civilized Tribes, from November 1, 1916, to May 31, 1919, covering manufacture of gasoline, casinghead gasoline, unrefined naphtha and casinghead naphtha, at Jenks, Kiefer and Drumright, Oklahoma?"

A. I have with me all of the oil and gas leases of the Gypsy Oil Company covering such Indian lands under which the Gypsy Oil Company has produced casinghead gas and delivered the gas to its manufacturing plant. We have as such no

contract between the Indian lessor and the Gypsy Oil Company, expressly referring to casinghead gas. I also have with me a contract between a restricted Indian and the Gypsy Oil Company covering a site by which it has built and operates a casinghead gas plant.

Q. Have you those records in your possession now?

A. I do have.

Q. Will you produce them for the court?

By Mr. Diggs: The Gypsy Oil Company objects to the introduction of any of the papers unless the gentleman will specify what particular leases, building, station, contract he desires so we can offer it to the court for the purpose of determining whether or not the Government is entitled to it.

By Mr. Gann: May it please the court before ruling on this question, the point the Government has in mind in asking for all these records is that in the purchase of the gas the extraction of the gasoline contents from the gas and in the settlement of the royalties paid for the gas so purchased and used the Gypsy Oil Company used the language always as referring to—as referring to gasoline and that is the only purpose the Government has in showing an admission on the part of the Gypsy Oil Company that that product was gasoline.

By the Court: I don't think that would be competent against the Gulf Refining Company.

By Mr. Chambers: We have established the fact that the Gypsy Oil Company and the Gulf Refining Company as far as the gasoline is concerned they were working together in every particular.

By the Court: I don't think you have done that.

By Mr. Diggs: We now offer to produce for the court for inspection Departmental leases covering this land so the court can determine whether or not such word is used and such language and we submit all of them to the court for its inspection.

By Mr. Chambers: The evidence in this case has developed the fact that these two companies are working together and we will have of course, further evidence with reference to that proposition.

By the Court: I will not permit it now.

By Mr. Chambers: The purpose, you understand, is if we have provided sufficient evidence to show that the Gypsy Oil Company treated this commodity under all conditions as gasoline—

By the Court: The Gypsy Oil Company isn't on trial No now and I don't know of any such thing as a constructive crime? This is an offense charging intent and the fact that when they dealt with the lessee and referred to it as casinghead gasoline the lawyers probably drew the contract. There are too many elements.

By Mr. Chambers: The lawyers drew the contract but the contracts were signed by the Gypsy Oil Company, and if we haven't we will expect to show that these two companies were working in conjunction in so far as their gasoline business was concerned.

By the Court: Suppose they were. It has made its contract.

By Mr. Chambers: And the gasoline department at Kiefer is under the control of the Gulf Refining Company just the same as it is the Gypsy Oil Company. It is a joint purpose. In other words these lease- are for the joint benefit and the joint purpose of Gypsy Oil Company and the Gulf Refining Company.

By the Court: Let me see one of these lease-, I don't think it is competent.

By Mr. Swacker: I think we are entitled to an exception to this speech making before the jury.

By the Court: No, they are entitled to present their case the same as you are. Whenever the court is ruling on your side you had better let him alone.

By Mr. Diggs: I am adhering to that injunction of the court.

The Witness: If the court please, may I state the terms "casinghead" and casinghead gas. Casinghead gasoline is not mentioned in these departmental leases.

The Court: Now, if these records were not public property and you hadn't had access to them, I would give you a little more latitude. Now, all these departmental leases are of record in the Indian Agent's office. Now, these departmental leases they are on forms gotten out by the Department of the Interior, are they not?

Mr. Gann: Yes, sir. They are public documents in that sense?

The Court: Now what part of one of these departmental leases do you claim would be competent and relevant in this case?

Mr. Gann: I don't know whether this is the same form your honor is reading from or not, but here is one

entered into on the 30th day of April, 1917. I won't give the name of the parties because it might be private matter, but the third paragraph of this lease: "The party of the second part—which is the Gypsy Oil Company—further agrees that it shall extract the gasoline from said casinghead gas, the remainder of dry gas, or so much thereof as may be necessary, shall be returned to the premises above described, for use in operating said oil and gas mining lease."

The Court: Let me see that.

(Mr. Gann hands paper to the court.)

By the Court: Second part.

By Mr. Ganns: The third paragraph your honor of page 2.

By the Court: Page what?

By Mr. Gann: Page 2, third paragraph for the extraction of gasoline.

By the Court: I don't think that is competent, the fact that the contract was conceived that there was gasoline in casinghead gas, if they would extract it from it. I will exclude that character of evidence at this time.

By Mr. Gann: That applies to all of these Indian documents.

By the Court: Yes.

By Mr. Gann: That is all.

By the Court: That is, unless you show me something else. If you show me something else.

By Mr. Payne: May it please the court the Gypsy Oil Company made report to the United States Indian Superintendent at Muskogee, reporting on royalties due to Indians and it shows that they leased lands from the Indians and extracted gas and produced gasoline and that was produced in the same place where they allege unrefined naphtha was produced and the same time reported as gasoline it was shipped as unrefined naphtha.

By the Court: That is true if you had a witness on the stand testifying that it was unrefined naphtha you could ask him that but here the Gypsy Oil Company is not on trial, the Gulf Refining Company is on trial here. Now you say the admission made by the Gypsy Oil Company in matters dealing with the payment of royalties on these—that that could be admitted on trial here as an admission against the Gulf Refining Company? That looks to me like that is hearsay.

By Mr. Payne: The Gulf Refining Company instructed the Gypsy Oil Company to ship and the shipments—and ship it as unrefined naphtha.

By the Court: Yes.

By Mr. Payne: The same shipment—in the same shipment shipped it as unrefined naphtha, the Gypsy Oil Company reports to the Indian Superintendent as gasoline.

By the Court: Not necessarily.

By Mr. Payne: That is why we want to get these leases in to connect it up.

By the Court: There is a legal way to do it. Here—they wrote the leases, say now the Gulf instructed the Gypsy to bill this out as unrefined naphtha. The Gypsy did that—

By Mr. Payne: Billed it all, billed all of their production that way.

By the Court: I will let you prove now that they billed out the same way to Pittsburgh but why—I do that on the theory you have evidence here that they have a joint traffic man but there is not any proof here that this joint traffic man directed these payments to be made. No, I don't think that is competent.

Mr. Payne: Here is our theory for your honor's consideration, that the Gypsy Oil Company was practically an accessory before the fact in this concession in that they misbilled the shipment.

The Court: But you haven't got them charged with a conspiracy to violate the law.

Mr. Payne: Part of the device whereby the Gulf Refining Company got the concession, and thereby they aided and abetted and were in a joint purpose.

The Court: To my mind I think it is fundamental that that is not competent. If you have any authorities that deal on it I would be glad to hear you, but to my mind that is fundamentally incompetent.

Mr. Payne: Volume sixteen of Cyc under the subject of evidence and admissions and under the subject of conspirators and persons acting together, says that where two or more persons are acting together under a common design, that the admissions of one are admissions against the others.

The Court: Well, now let me see that.

Mr. Diggs: Will the court bear with me a minute? I want to object to statements about conspiracy.

The Court: Oh, they have a right to do that. We haven't time to take that up. You may have an exception.

Mr. Diggs: We have offered twice, three times, in open court, to admit that at certain dates, until this tariff went into effect, we shipped this identical article as gasoline.

The Court: But you always reserve an objection on the ground that it was incompetent. That while the admission was made, that at the same time an exception was reserved to its relevancy. That is in the record.

The Court: Now, the—

Mr. Diggs: If that be true, and the court decides it is relevant then the admission stands.

The Court: But no, I decided it was relevant and granted you an exception, and it is in the record. I made the inquiry at the time I excluded those instruments when you reserved an exception at that time, whether or not you made the exception on the ground it could be proved and you said not, so today when it came back and you raised that exception I let them put that in there. I just want to work this out. Now the declarations of conspirators, that would have to be within the scope of the conspiracy, wouldn't it?

Mr. Swacker: Certainly, if there were such a thing, or attempt to prove that.

The Court: This is not a conspiracy, they are not charged with a conspiracy, and even if they were, the declarations would have to be within the conspiracy. Now here is the paying of rentals, and the language used there, I don't think it is competent.

Mr. Payne: The Gypsy Oil Company, under the contention of the government misbilled these shipments, which was the means by which the Gulf Refining Company paid less than the gasoline rates. Now can the Gypsy Oil Company misbill these shipments as unrefined naphtha and at the same time report the same thing to the Indian superintendent as gasoline?

The Court: The Gypsy is not on trial, that might be admissible against the Gypsy, but the Gulf is on trial. Now the only theory that I let in the way they billed them to the two places is because the evidence in this case tends to show that they had a joint traffic man and for that reason that now there ain't any evidence to show that this

joint man had anything to do or any direction about the remittance of these royalties.

Mr. Payne: It is true, your honor, that the rule is that the statements and admissions must be within the scope of the common design, and if your honor thinks this is outside of that we will not offer them.

The Court: I do not think that it is competent.

Mr. Gann: There are some further documents to be produced out of this subpœna, we had not reached yet when the question as to the royalties came up. These additional papers are asked for in the subpœna. Also office copy of all reports of the auditor of the Gypsy Oil Company, gasoline department, to L. H. Haskell, General Auditor, Pittsburgh, Pennsylvania; then the ledger, recording same, showing the quantity and value of the gasoline, unrefined naphtha, casinghead gasoline and casinghead naphtha manufactured at Jenks, Kiefer and Drumright, Oklahoma, from November 1, 1916, to May 31, 1919.

By Mr. Swacker: We have here in response to that, vouchers that are the nearest in description to that that we know of, the report concerning the matter but we have not the ledger here. Nothing in the record to contradict the voucher. They contain all the information that they possibly could.

By Mr. Gann: Also all letters signed by Mr. Ellis, addressed to W. P. Donovan relative to rates and transportation of gasoline, unrefined naphtha, casinghead naphtha, and casinghead gasoline from Jenks, Kiefer and Drumright, Oklahoma, from January 1st, 1914, to May 31st, 1919.

By Mr. Swacker: We produce 41 letters or telegrams in response to that, 41 sheets.

By Mr. Gann: Also all correspondence, both by letter and telegram between W. P. Donovan and C. B. Ellis relative to the rules and regulations covering the transportation of explosives or other dangerous articles in interstate transportation from September 1, 1917, to May 31, 1919.

By Mr. Swacker: 55 pages of letters and telegrams produced in response to that item.

By Mr. Gann: Also all correspondence both by letter and by telegram between C. B. Ellis and W. P. Donovan relative to the transportation of gasoline, unrefined naphtha, casinghead gasoline and casinghead naphtha from Jenks, Kiefer and Drumright, Oklahoma, from January first, 1914, to May 31st, 1919.

By Mr. Swacker: 37 sheets of letters and telegrams produced in response to that.

By Mr. Gann: May I suggest to the court that these documents have been produced under subpoena and they are very voluminous. The government counsel and its assistants have not been able to yet examine these records because they have been just produced. Will the court permit the government counsel to remove them to the quarters in the Federal building now occupied by them for the purpose of inspecting and preparation for witness in testimony in connection with it.

By Mr. Diggs: We object to the request of the government on the grounds that they are the papers of the Gypsy Oil Company—

By the Court: I order these statements put in the custody of the clerk and you may examine them in the custody of the clerk. They are then in the custody of the court. I will give them an opportunity to examine them while in the custody of the court.

By Mr. Diggs: The Gypsy Oil Company objects to being compelled to surrender these or its private papers to anyone. The clerk or the court or anyone else here offers to produce by witness that will identify the letters, any particular letter that the United States may call for subject to the order of the court as if it be admissible in evidence.

The Court: Well, I will overrule that, the Gypsy isn't on trial. I will not turn your private papers over to the opposing side but while they are in the custody of the court I will give them an opportunity to examine them.

Mr. Swacker: We think we should have an exception on the part of the Gulf Refining Company. You have stated that having a common traffic manager you are admitting it on that theory. Many of the papers are papers passing between them.

The Court: The clerk will keep these papers in his custody and I will not permit them to leave his possession without an order. But while they are in the possession of the deputy clerk, one of these attorneys may examine these papers.

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And thereupon, G. C. WEDDELL, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. What is your full name? A. G. C. Weddell.

Q. Were you agent of the Texas and New Orleans Railway at Port Arthur, from May, 1916, to April 1, 1919?

A. Yes, sir.

Q. Were you joint agent at Port Arthur for the Texarkana and Fort Smith Railway and the Texas and New Orleans Railway, from April 1, 1919, to May 31, 1919?

A. Yes, sir.

Q. You were there after that, but I just wanted to cover up to that date. As such agent did you collect freight charges on shipments consigned to the Gulf Refining Company?

A. Yes, sir.

The Court: Now he is agent of what railroad company?

Mr. Payne: He was joint agent of both railroads during the—

The Court: What railroads?

A. Texas and New Orleans Railroad and the Texarkana and Fort Smith Railroad.

The Court: Well, the Texarkana and Fort Smith, that is a part of the Kansas City Southern?

A. Yes, sir, the Texas branch.

Q. The Texas branch of the Kansas City Southern. Were you agent at Port Arthur or West Port Arthur?

A. Port Arthur on the T. & N. O. and at West Port Arthur on the T. & N. O. also.

Q. You had jurisdiction over both cities?

A. Yes, sir, that was until February 1, 1919.

Q. As such agent do you collect freight charges from the Gulf Refining Company on shipments consigned to them?

A. Yes, sir.

Q. Have you examined your cash book with reference to the determining the amount of freight charges collected on a list of shipments, list of cars, stating the car number and initial, which we handed you?

A. I have examined the cash book that covered that period.

The Court: Now you will have to identify the cars to get it into the record.

Q. Have you that statement with you?

A. I have the statement, yes, sir, it shows the date of shipment, the date of payment and the amount of payment and the car number and initial.

The Court: You had better identify that as an ex-

hibit so you can put it into the record without taking the trouble to call off each one of them.

Mr. Payne: I make this statement, that the original record from which this statement was tabulated are quite voluminous but are here and are subject to examination by the other side, and with that explanation I offer this statement marked Government's Exhibit 15 in evidence, as showing the amount of freight charges collected from each car in the indictment.

The Court: No, if they object to it it is not competent, but you have a list of cars on the exhibit and you can ask him if he examined as to those cars. Then that can be put into the record. Then he can testify whether he made it in his own handwriting and you can use that memorandum there to testify by.

By Mr. Diggs: If the court please, we don't desire to interpose an objection to this as being incompetent and if they will just pick out from here the car numbers mentioned in the indictment and ask the witness if this car number, number so and so, in this indictment the amount thereon paid, we will not object to that.

By the Court: Very well.

By Mr. Payne: You wish to waste the time in taking up each one in the indictment.

By Mr. Diggs: I don't see how else to get at it Mr. Payne. These numbers run consecutively?

By Mr. Payne: Yes, sir.

By Mr. Diggs: If the court please the best way to run this we will agree at present to the admission of this paper and we will examine it to see if it contains any cars not mentioned in the indictment and if it does we can raise the question later.

By the Court: Very well.

By Mr. Payne: We will turn it over to you now, Mr. Diggs?

By Mr. Diggs: We are agreeing to it for the present.

By the Court: May it be admitted as testified to by this witness, that the cars numbered on that paper and the amount of freight shown collected by him from the Gulf Refining Company you admitted he would testify as shown there, and after they *they* have examined it that to be identified as an exhibit and the reporter can let them have it tonight and they can examine it and then if there

is any irrelevant matters they want stricken out they will have the right to raise it by motion.

By Mr. Diggs: Yes, sir.

By Mr. Payne.

Q. Can you state generally of your own knowledge that prior to December 2nd, 1916, all cars consigned to the Gulf Refining Company at your station were billed as gasoline and that the gasoline rates were paid on them? A. Yes, sir.

By Mr. Diggs: To which we object, as being incompetent, irrelevant and immaterial and not the best evidence, especially calling for the witness not to be shown to know what the gasoline rate is.

By Mr. Payne: He said he could testify to that of his own knowledge.

By Mr. Diggs: That is not the way to prove the rate.

By Mr. Payne: That every car coming to his station from Kiefer, Jenks and Drumright was billed as gasoline and he collected the gasoline rates, whatever it was.

By the Court: Well, if the books show that as to how it was billed that is in writing. They object to it because this is not the best evidence. I think that objection should be sustained.

Q. Mr. Weddell, can you state from an examination of your records that every car consigned to the Gulf Refining Company at your station after December 2, 1916, from Kiefer, Jenks and Drumright were billed as unrefined naphtha or casinghead naphtha with the words "unrefined naphtha" in parenthesis under it, and that on all those cars you collected freight charges at the unrefined naphtha rate?

By the Court: They have admitted that, they have admitted in the record that all of the shipments after December 2, 1916, were either billed—all shipments of that commodity were billed as casinghead gasoline naphtha unrefined, in substance that, and unrefined naphtha. They have admitted that. I will permit you to testify on what rate you collected because that is not a matter of record. That is a concrete fact; but if they object as to how they were billed and how they were shipped, that is a matter of record.

By Mr. Swacker: They were billed from the period December 2, 1916, until September 1, 1918, plain unrefined naphtha, but with the stamp "Dome cover placards" attached, and after that date "casinghead gasoline 1824K" and "unrefined naphtha" until the last date in the indict-

ment and all the while bearing these same "Dome cover placards."

The Court: Now, you may ask him as to what basis, rate basis, he collected the freight on that.

Q. You may answer the question as the judge has put it.

A. After December 2, 1916?

Q. Yes.

Mr. Diggs: We object to that portion of the question that calls for the witness to say at what rate it was settled at. We have no objection to his stating the amount of money received on these cars.

The Court: Now, if you have got any authority that a witness cannot state they collected all these freights on a certain rate, I will hear you on that. I think that is a concrete fact that the witness can testify to.

Mr. Diggs: We don't think that is the way to prove the rate.

Mr. Payne: We will introduce the tariff for that purpose.

The Court: The tariff is the best evidence, but that would be for the purpose of proving what rate on what basis it was collected, and if he collected under a certain rate or a certain prescribed rate. We cannot tell what the rate was, but my recollection is that is a concrete fact that he can testify to. If he cannot do that you never could get through a trial in a lawsuit.

Mr. Diggs: I would like to have the question read.  
(Question read by the reporter.)

Mr. Diggs: What is the date you refer to?

The Court: That is after December 2, 1916.

Mr. Diggs: We withdraw the objection.

Q. What is your answer?

A. After December 2, 1916, the rate—the freight was collected on the basis of unrefined naphtha as shown in the tariff.

Mr. Payne: May it please the court, I am not clear as to whether the witness was allowed to answer as to the rate he collected on shipments prior to December 2, 1916, from the three points. I will now repeat the question subject to objection.

Q. From the time that you became agent at Port Arthur in May, 1916, until December 2, 1916, can you state of your own knowledge how the shipments consigned to the Gulf Refining Company at Port Arthur, shipped by the Gypsy Oil Com-

pany from Kiefer, Jenks and Drumright were billed? That is, as what commodity and on what rate basis you collected freight charges?

A. They were described—

Mr. Swacker: We object to that as incompetent, irrelevant and immaterial.

The Court: No, I don't think I will let you go into that any further. Now I permit you to introduce certain records in writing to show that prior to that time in the transaction of their business as to certain—as to the same commodity, that they billed it as gasoline.

Mr. Payne: It was just for the purpose of following that up to show it was not only billed as gasoline but the gasoline rate was paid.

The Court: Go and get them and ask them what rate they collected, you have got them, ask them what rate they collected on them.

Q. Referring to Government's Exhibit No. 2, covering shipments from Kiefer, Oklahoma, in November, 1916, and by the Gypsy Oil Company, gasoline department, and consigned to the Gulf Refining Company at Port Arthur and billed as gasoline, can you state what rate was collected on those shipments?

The Court: What basis of rate?

Q. What basis of rate?

Mr. Swacker: As he puts the question, he can or will he?

The Court: He is asking if he can state—

Mr. Swacker: We object to the question as being irrelevant, incompetent and immaterial.

Q. Mr. Weddell, as a general railroad practice—

The Court: No, he has not answered the question yet.

A. The freight charges were collected on the rate, gasoline rate.

The Court: On the rates prescribed for gasoline?

A. Yes, sir.

The Court: The commodity shipped as gasoline?

A. Yes, sir.

Q. As a general railroad practice, did you apply the rate on that commodity if it is billed, that is to say, if the shipment is billed as gasoline would you apply the gasoline rate?

A. Invariably, except where it has been inspected and shows to contain a different commodity than billed.

Mr. Payne: That is all.

The Court: Then you apply the rate that applies to the article the inspection shows?

A. Yes.

Mr. Payne: You may cross examine, I am through with the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. Weddell, you testified that you had collected the unrefined naphtha rate on all shipments shipped by the Gypsy Oil Company to the Gulf Refining Company at Port Arthur since December 2?

The Court: 1916.

Q. 1916. Is it a fact, Mr. Weddell, that you did undertake to hold out some of these cars claiming a higher rate than the unrefined naphtha rate?

Mr. Payne: I object unless he fixes the period, your honor. I covered only the period from December 2, 1916, to March 31, 1919, which was the date of the indictment, the period covered by the indictment.

Mr. Diggs: I will state the question again.

Q. You did undertake in the year 1919, prior to November 22, 1919, undertake to hold some of these cars on the ground that they were subject to a higher rate?

The Court: Now, after the railroads were put into the hands of the government, I will require you to limit that. I believe this indictment goes up to that period.

Mr. Payne: And beyond. But, your honor, what happened in November, 1919, can have no bearing on this case as the period we cover ends with May 31, 1919, and these gentlemen on the other side have been very particular to limit us to what happened during the period of the indictment itself. It is a well established rule. We have never attempted to show as to what has happened afterwards.

Mr. Swacker: All these subpoenas duces tecum call for more than two months after the indictment. I understood your honor to rule this morning that you would allow evidence on certain matters up to the return of the indictment but not afterwards.

The Court: I have ruled that is true.

By Mr. Diggs: If the court please we can thrash this matter out in a second by stating to the court what I expect to prove and then let him rule on it.

By Mr. Payne: Subsequent to the period no matter what it is it would not be competent.

By the Court: I will hear you state what it is.

By Mr. Diggs: The defendant, Gulf Refining Company, expects to prove by this witness and now offers such proof that some time in the month of July, I think July 26th and up to and prior to November 22, 1919, he undertook to refuse to deliver the ears described unrefined naphtha shipped by the Gypsy Oil Company from the plants of said people at Drumright and Jenks.

By Mr. Payne: We object to the question as leading.

By the Court: He has got a right to ask leading questions, this is your witness.

By Mr. Diggs: To the Gulf Refining Company at Port Arthur and was compelled to deliver said ears to the Gulf Refining Company under said rate by order of the United States District Court at Beaumont in pursuance of an order made in a case in which the Gulf Refining Company was complainant and the Railroad Companies and Walker D. Hines, the Director of General of the railroads, were defendants.

By the Court: You need not answer that question, I will sustain the objection.

By Mr. Diggs: Exception if your honor please.

By the Court: Alright, give him an exception.

By Mr. Payne: No re-direct, your honor.

(Witness excused)

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Whereupon, ARTHUR A. TOPPING, a witness called for and on behalf of the Government, having been duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Arthur A. Topping by Mr. Payne.*

Q. State your full name.

A. Arthur A. Topping.

Q. What is your position?

A. I am in the Bureau of Tariffs of the Interstate Commerce Commission.

Q. Where? A. Washington, D. C.

By the Court: What is your position?

A. I am the rate clerk.

By the Court: Go ahead.

Q. How long have you held that position as rate clerk in the Interstate Commerce Commission? A. 12 years.

Q. As rate clerk, Mr. Topping, what are your duties?

A. We compile rate statistics of tariffs filed by carriers with the Interstate Commerce Commission and quote rates to the public and quote rate statistics and compile rate statistics for the Interstate Commerce Commission in their work.

Q. In other words your entire duties are with and connected with the railroad tariffs? A. Yes, sir.

Q. Have you made an examination of all the tariffs and classifications covering shipments of various petroleum products from Kiefer, Jenks and Drumright, Oklahoma, to Port Arthur and West Port Arthur, Texas.

A. I have.

Q. In December 2, 1916—what was the rate—just a moment—have you the tariff certificates with you?

A. Yes, sir.

By Mr. Payne: I offer these in evidence without identification in view of the certificate of the secretary of the Interstate Commerce Commission only. These are Exhibits 16-20.

By Mr. Swacker: We will have to have some little time to examine them. They are quite voluminous and don't know what they show and have not seen them up until now.

By the Court: You can see whether you object to them on the authentication.

By Mr. Swacker: We will not object to them on the authentication.

By the Court: Let them be admitted subject to objection later on as to the relevancy.

Q. What was the rate of gasoline, what does the tariff on file with the Interstate Commerce Commission show the rate on gasoline from Kiefer to Port Arthur on December 2nd, 1916? A. 33 cents.

By Mr. Swacker: I object, incompetent, irrelevant and immaterial and ask the witness to wait until I have time to object. The tariff is the best evidence.

By the Court: Let him refer to the tariff and let him point it out—I believe that is the rule.

By Mr. Swacker: He is trying to ask the witness to state the rate. I have no objection to him reading any of the certificates of the tariff but that is one thing and this is all together another.

By the Court: He is qualified as an expert.

By Mr. Payne: That is the purpose, to conserve time is all.

By the Court: You follow the law, I will conserve the time, I don't think either of you are time savers.

By Mr. Payne: I qualified him as a tariff expert man and he answered he was.

By the Court: Let him see the tariff and call it to the jury and if there is any technical terms he may explain them as an expert.

By Mr. Swacker: There are no tariff experts, that is a matter of law.

By the Court: Go ahead.

By the Court: Find the rate on gasoline, unrefined naphtha, on the certain rates shown and pointed out and then he can figure out the rate. That gets the predicate before this jury for the other side. The way I understand the rule of evidence is that if I am wrong about that either side can show me.

By Mr. Swacker: We don't contend that he can't read from those papers but we say he cannot testify to any facts either as being a fact or as being in those papers.

By Mr. Payne: Here's the position, the tariffs are now in evidence and here is a tariff expert to tell just what the tariff was.

By the Court: The way to get admissions made is to follow the law. You all look like you are just trying to try the case; you don't look to be trying to get anywhere.

By Mr. Payne: We thought the tariff being in evidence that would be sufficient.

By Mr. Swacker: We are not claiming they are not sufficient, being in evidence because of these certificates—

By the Court: Never mind, I will attend to that.

Q. Read that item please showing the rate on gasoline?

A. Gasoline in tank cars, Kiefer, Oklahoma, to Port Arthur, West Port Arthur, Texas, 33 cents.

By Mr. Swacker: I would like an exception if that is an answer to what has been asked as to what is the rate.

By the Court: What does that rate sheet show as to the rate on gasoline and unrefined naphtha from Kiefer, Oklahoma, on December 2, 1916, to West Port Arthur and Port Arthur, Texas?

A. This particular extract, your honor, shows the rate only on gasoline. It is not unrefined naphtha. I have another abstract showing unrefined naphtha if your honor desires that. This one shows the rate on gasoline from Kiefer to Port Arthur, 33 cents on one hundred pounds.

Q. Now find the rate on unrefined naphtha effective on the same date between the same points? Before you leave that does that rate show the routing there?

A. No, these tariffs are what we call open as to the routing.

Q. What do you mean as to open as to the routing?

By Mr. Swacker: We object to the witness testifying to the contents of a written paper.

A. I mean to say by being open I mean the rate is not confined to a particular routing applying on this particular carriage.

By the Court: Now, in the railroad world when the tariff is silent what does that mean?

A. It means the certain lines that are parties to this tariff and I can read you the lines.

Q. When it is silent what does it mean?

A. It means that it applies over all lines that are parties to the tariff.

Q. Now refer to the tariff and state what lines are parties to that tariff? Read from it.

A. Kansas City Southern Railroad Company, St. Louis, San Francisco Railway Company, St. Louis & San Francisco Railroad Company of Texas, Texas and New Orleans Railway Company, Texarkana and Fort Smith Railroad Company, the Midland Valley Railroad Company was added herein in the Supplement.

By Mr. Swacker: There is no date as to which the witness is now testifying as to when the parties were parties to this tariff.

By the Court: Naturally a supplement would be after that date. Now, when was that supplement made?

A. May I explain? This extract covers the period from January 1, 1913, down to May 31, 1919. It includes a number of complete tariffs and a number of supplements that were effected. Now the Midland Valley was added here. The Atchison, Topeka & Santa Fe are also a party to it—

By the Court: When was it made a party?

A. Effective July 24, 1914. It is a party to all of the tariffs in this extract.

By the Court: Now, what is the date of the Midland Valley?

A. I am looking for that now, your honor. An extract is a very cumbersome thing to testify from anyway.

A. Midland Valley shows, is on May 2nd, 1917. I know it was, I know it was in there before that.

Mr. Swacker: If we had an opportunity to examine those papers we might save time—

The Court: That is out of your jurisdiction now, you are encroaching on my preserves now.

A. That is the first day I see the Midland Valley in there, I would not say it was not shown before that.

The Court: What date is that?

A. First date I notice is May 2nd, 1917. But it is in there I think before that time. These extracts were compiled from books containing four or five hundred pages.

The Court: Turn to unrefined naphtha.

A. All right. Kansas City Southern Railroad, St. Louis, San Francisco, Texas & New Orleans Railroad Company, Texarkana and Fort Smith Railroad Company, and T. & N. O. Railroad Company, the Midland Valley Railroad Company, rate on unrefined naphtha affective December 2nd, 1916, from Kiefer, Oklahoma, to Port Arthur, Texas, was nineteen and a half cents.

The Court: Proceed.

Q. What was the rate on gasoline from Jenks, Oklahoma—

Mr. Swacker: I objected to the form of question, I have no objection to him stating—

Q. What does the tariff show the rate on gasoline from Jenks, Oklahoma, to Port Arthur, Texas, effective during the period, effective February 3rd, 1917?

Mr. Swacker: I object to the form of that question also. I have no objection to him saying what the excerpt he has shown or purports to show in that respect.

The Court: These are the tariffs and I suppose the certificate there shows—

A. It does.

The Court: Read from this if you want to when it was in effect, have him read from the certificate. The only way to get concessions out of the other side is to go down the line. If you ask them to make exceptions as to form, they will not do it, the way to get concession is not to indicate you give a cent whether they made a thousand or not. Go ahead.

A. What date, Mr. Payne, please?

Q. The first date that you find a rate effective February 3, 1917, from Jenks.

A. Effective on January 16th, 1917, the rate on gasoline from Jenks was thirty-nine cents for one hundred pounds.

The Court: Jenks to Port Arthur?

A. From Jenks to Port Arthur, yes, sir.

Q. And also West Port Arthur?

A. That applies to West Port Arthur also.

Q. Did you say the rate from Kiefer on gasoline applies to West Port Arthur according to the tariff? A. On gasoline?

Q. Yes. Well, the record will show, never mind.

A. I don't think it does, without looking back.

The Court: Look back and see. Let's settle that now.

A. It did.

Q. It applied to West Port Arthur?

A. Yes, sir, I have it right here.

The Court: Well, just as well get it from Drumright while you are there.

Q. Did you state the rate on gasoline from Jenks according to those tariffs in effect on February 3, 1917?

A. I did, thirty-nine cents for one hundred pounds.

Q. Now, from Drumright, effective May 2, 1917, the rate on gasoline that those tariffs show?

The Court: Can't you all agree what these tariffs show, can't you agree on that?

Mr. Swacker: It is rather a complicated thing, if we had a little time to examine them, perhaps we can.

The Court: Suppose we let them have these tariffs tonight and see if they cannot agree to them and recall this witness in the morning as to any other matters that may be necessary to examine him on?

Mr. Payne: All right.

The Court: The witness then may be excused. Turn them over to the reporter and let him mark them as exhibits and then the reporter will let them be withdrawn by counsel for the defendant tonight so they may examine them.

Gentlemen of the jury, you will be permitted to separate under the usual instructions and caution that I gave you yesterday. You may go now until tomorrow morning at nine thirty o'clock. The audience will keep their seats as the jury files out.

Whereupon court took a recess until tomorrow morning at nine-thirty o'clock.

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(Whereupon, court met pursuant to adjournment, the same parties appearing as heretofore, the Honorable R. L. WILLIAMS, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed the following proceedings were had and the following evidence offered and introduced, to-wit:)

By Mr. Gann: If your honor please, the defendant yesterday produced certain records in response to a subpoena duces tecum. It is my understanding that they had produced all the records called for from Port Arthur but in checking up the various voluminous papers in custody of the clerk last night we find there are some additional papers that have not been produced.

By the Court: Have you given them a memorandum.

By Mr. Gann: We took it up with counsel and they say they haven't been called for.

By Mr. Swacker: We have them here and as soon as we get a key we will get them.

By the Court: Call your witness. Now none of the witnesses in this case will be excused on either side until the matter has been brought to the attention of the court.

By Mr. Diggs: In reference to Government Exhibit No. 15 can we have the stenographer refer to that and see what it was the government wanted me to admit?

By the Court: How?

By Mr. Diggs: In reference to Government Exhibit 15 can I have the stenographer refer to the record and see what it was the government wanted me to admit?

By the Court: Admit just like it was sworn, to just like the questions were propounded and answers made.

Mr. Diggs: In reference to Government's Exhibit No. 15 the defendant admits that such exhibit may be treated with the same force and effect as if the original books showing the entries thereon were produced in court; and admits further that the amount shown therein to have been paid by the Gulf Refining Company to the railroad company, for the purposes of this trial are admitted to be true; limited for the purpose of this trial because the

figures are not exactly accurate, but for the purpose of this trial we will admit they are true and are the sums paid.

Mr. Diggs: If the court please, in Government's Exhibits 16, 17, 18, 19 and 20, the defendant admits that the excerpts shown therein from the tariff are true copies of the tariff and may be taken with a like effect as if the tariffs were introduced, in so far as the same covers the rates on unrefined naphtha and gasoline, but do not admit the truthfulness or relevancy of that part of the exhibit which do not purport to be a part of the tariff.

The Court: Proceed.

Mr. Payne: Call Mr. Topping—no, call Mr. Timmons.

Mr. Swacker: We understand those are now admitted in evidence over the objection which Judge Diggs made as to the matters not direct excerpts as to the rate on this gasoline and unrefined naphtha?

The Court: What is in there that you object to?

Mr. Swacker: There are matters not purporting to be excerpts from the tariff.

The Court: What is that?

Mr. Swacker: Statements of the commission.

The Court: What statements?

Mr. Swacker: Statements in the certificate on the face and on each of the sheets a statement by way of preface.

The Court: Point it out.

By the Court: Go ahead and examine this witness.

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Whereupon, F. A. TIMMINS, was recalled by the Government for further examination:

*Direct Examination of Mr. Timmins by Mr. Payne.*

Q. State your name, please? A. F. A. Timmins.

Q. Are you the F. A. Timmins that testified in court here yesterday? A. Yes, sir.

Q. You testified yesterday in reference to cars that were unloaded at Port Arthur, that samples were taken from those cars to the laboratory. Now did you have samples taken from the different tanks in the refinery and were those samples also tested in the laboratory?

A. Yes, sir, samples from these tanks were taken every

day and possibly two or three times a day, just as the case required it.

Q. Was that every tank in the refinery?

A. All the finished tanks were taken, and these gasoline were taken and sampled every single day.

Q. I will limit my question to the light oils? A. Yes, sir.

Q. Samples were taken from the tanks by whom?

A. The sample boy.

Q. What did he do with them?

A. He carried them to the laboratory.

Q. And the laboratory made such tests? A. Yes, sir.

Q. What were those tests, Mr. Timmons?

A. Well, what grade of oil you are speaking of, light oils, now?

Q. Yes, sir?

A. Well, the distillations were taken and the gravity taken and the color taken.

Q. Were you advised of the results of the tests?

A. Yes, sir, either telephoned there or went there; as the books were open to my inspection.

Q. And then did you designate as to how the fluid in the tanks should be listed in your records?

A. That depended upon the specifications, whether it met the requirements or not.

Q. What determined you as to whether you would instruct—

Q. Who made the entries in the record as to what was in a particular tank, or in all the tanks containing light oil?

A. What records do you mean?

Q. Your record of daily tests?

A. Quite a number, lots of them.

Q. I don't mean for you to give me their names?

A. Laboratory tests.

Q. Inspectors?

A. Well, class them as inspectors, yes, sir.

Q. Well, now did you instruct the inspectors as how they should enter, what they should call the fluid in a particular tank?

A. Not generally unless I went in and found a tank I wanted to have the name changed, they didn't just call right, maybe the stock would call for shortage of oil where we knew we had it and the stock wouldn't show it.

Q. Never mind about that, you are too far afield. Then inspectors themselves had certain instructions as to how they would enter the different oils in this test sheet?

A. I judge so.

The Court: You know so, whether they did?

A. Well, I can say yes to that.

The Court: Go ahead.

Q. Referring particularly to tanks 805, 838 and 857, which yesterday you testified, if I remember correctly, were blending tanks what determined the inspectors—that is, by what standard, what standard would they apply in pronouncing the fluids in the particular tanks to be naphtha or gasoline?

A. I don't know whether they would have the right, whether it would be left to the officers to determine that. I determined on the specifications.

Q. Just a moment, would you mind speaking a little louder in your answers, there is a lot of noise and I am sure the jury cannot hear you, I cannot, repeat the answer.

A. Their ideas and my ideas and other persons' ideas might not—other persons might not have the same idea of the same grade of oil, and that would depend on the specifications.

Q. Did the gravity determine anything?

A. It did, yes, sir.

Q. What did it determine?

A. Either too light or too heavy.

Q. I mean in reference to what you would pronounce the oil in a particular tank was?

A. No, it would not, it would class—it could be classed as a gasoline, unfinished or finished.

Q. Suppose the gravity was fifty-seven or higher, what would you or the inspectors designate the commodity as?

A. It would mean nothing to me unless I knew the specifications for distillation.

Q. Suppose the gravity was fifty-six or lower?

A. Same there.

Q. Well, state what the specifications were, Mr. Timmons, by which you pronounced the liquids in a particular tank to be gasoline or naphtha?

A. Well, there are so many specifications, it would just depend on what the orders were I was required to fill.

Q. When the stuff was in the tanks were you making anything? A. No, sir.

Q. You were just making a report of what was in it?

A. Yes, sir.

Q. You would take a test of a particular tank and you would make an entry in your books, gasoline or naphtha or painter's naphtha? A. Yes, sir.

Q. Now, how did the inspectors know, and how did you know as to what you would call that product?

A. I was governed entirely by what specifications I was to make, that is the way I got it.

Q. Well, now hold on, you were not making anything from

the stuff in these tanks, you were just determining, were you not, what was in the tank?

A. Well, I don't quite get you, state that over.

By the Court: I will see. Now you would put a certain commodity in tank 805?

A. Yes, sir.

By the Court: Well, now you would have that inspected, wouldn't you; well, now when you inspected it would you put it on the books of the inspector that examined the sample in the laboratory; did they note on the books what was in the tank?

A. They put the test on there, whether they knew what it was or not, I don't know.

By the Court: What do you mean by test?

A. Well, the gravity and color and distillation and specification.

By the Court: Go ahead.

Q. Were the inspectors that made these tests under your immediate supervision? A. No, sir.

Q. Under whose supervision were they?

A. The man in charge of the laboratory.

Q. In case of doubt on their part as to how they would test a fluid in a particular tank would they come to you for instructions?

By Mr. Swacker: I object he has said they were not under his instructions.

By Mr. Payne: They may be to that extent.

By the Court: Were the laboratory employees under you?

A. No, sir.

By the Court: Did they ever come to you for instructions part of their duties to come to you for instructions?

A. They would come to me sometime, sometimes they would ask me what happened to the tank. If they did not put it in the same tank what would happen to it and I would tell them.

By the Court: You say—whose duty was it to pass on it and determine what was in the tank, the names given, when it was given, the specifications, and when it was recorded?

A. I considered that would be the laboratory—the man in the laboratory.

By the Court: Go ahead.

By Mr. Payne: Mark this Government's Exhibit 21.

Q. I show you Exhibit 21 for identification and call your attention to the second and third and fourth and fifth and sixth entries which show gasoline—

By Mr. Swacker: I object to his question.

By the Court: Let him get the question in and don't answer until I pass on it.

Q. As to tanks 511, 512, 805, 357 and 922 I will ask you to state to the court if you know how the inspectors, how the inspectors inspected the contents of those tanks to determine the fluid in those tanks was gasoline?

By Mr. Swacker: I object to the witness testifying about the papers, it is not shown he ever saw it or knows anything about it or he made the entries or he had anything to do with it and he testifies the inspector was not under his direction.

By the Court: The question is if you know how they determine that. That is merely for the purpose of identification of a fact, directing the attention of the witness to it. If you know how the inspector determines, by what process to determine whether that was gasoline, if you know that you may answer that.

A. This report is not complete.

The Court: Now you answer the question, do you know how they determined that?

A. I know how they determine it.

The Court: Very well.

Q. State that?

The Court: What is that now?

Q. He says he knows how they determine it, state it then.  
A. Well, they take gravity, color and distillation.

Q. Is it not a fact that if the gravity is fifty-seven or above, you designate it as gasoline, and that if it is fifty-six or some few points below, fifty-six or fifty-five, the inspectors designate it as naphtha; if it is between fifty-five and fifty-seven they come to you for instructions as to whether they will designate it as gasoline or as naphtha?

A. They don't come to me for instructions at all. I stated before that was not left to me at all.

The Court: Now, you have answered the first part. You ought not to put so many questions in one. Now you asked him three questions in one, and he answered the last.

Mr. Payne: Thank you for the suggestion.

Q. If the gravity—is it not a fact that if the gravity is fifty-seven or higher, it is the general custom and course of business to designate the fluid in that tank as gasoline?

A. Might be with them, but it ain't with me.

The Court: What was it the custom in that laboratory?

A. The custom shows here that is what they called it.

Q. That is, they called it gasoline if the gravity was fifty-seven or higher? A. Yes.

Q. Suppose that the gravity was fifty-five, what was it the custom to designate it on those sheets?

A. Well, it shows here—

The Court: Well, never mind what is on that sheet. I don't permit what is on that sheet. What did they do, what did the experts in the laboratory whose duty it was to examine the samples, now what did they do, how did they designate it?

Mr. Swacker: I object to that, it is not shown that these are experts, they are boys and under somebody else's instructions; and he is stating what he assumes to be the custom of those boys in making these tests.

The Court: Well, he testified they worked in the laboratory; you would naturally assume that they were experts. What experience did those people that make the tests have?

A. Weighing up the oil and running distillations and taking color.

The Court: Well, did that experience qualify them to do that kind of work?

A. Yes, sir.

The Court: The qualification that is required in the usual oil laboratory for such people. Now I will give you all a chance to cross examine as to qualification if you want to.

Mr. Swacker: At this time?

The Court: Yes, I will permit you just like on voir dire to ask questions, and I will pass on whether they are qualified to do that.

*Examination by Mr. Swacker.*

Q. What is the age of these inspectors you speak of?

A. They run from eighteen, twenty-five, twenty-six and twenty-seven years old.

Q. Are they what you might consider as student chemists?—A. No, sir, not in that department.

Q. Are they chemists at all? A. No, sir.

Q. They merely perform the distillation tests which is a mechanical process? A. Yes, sir.

Q. And put down the instances shown by the distillation test? A. Yes, sir.

Q. They have nothing to do with the classification of the material they test? A. No, sir.

Q. Whatever name they may use or enter, is such as they themselves may adopt without any effort of accuracy as a matter of classification, not such as they may be instructed to?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

By Mr. Swacker: I don't think the entries are admissible—

By the Court: These boys as you call them that work there in making these tests to determine the color and the gravity, they determine the gravity and the color and what else do they determine?

A. They determine the distillation—

By the Court: The distillation, the color and the gravity, now how would they determine it?

A. By weight of the oil.

The Court: They determine the distillation by the weight?

A. Run through an Engler flask.

By the Court: Run it through an Engler flask and that would show the distillation would it?

A. Yes, sir.

By the Court: And then they took the color by what means, by what means did they take the color?

A. Through a machine, two tubes to it, one is empty and the other is filled up with this oil, there is a middle faucet on that and a microscope on the top and by looking through they match these two colors. When both discs match, that was your color.

By the Court: Now there is a distillation, the process of determining distillation and the process of determining the color, now the next is determining the specific gravity, how did they do that?

A. That is by hydrometers and a thermometer.

By the Court: Now their experience in making these tests under the processes outlined by you?

A. Yes, sir, they could do that if they had enough experience they could.

By the Court: Well, were they tested before they were put in there to do that kind of work.

A. They were broke into it, they gradually worked up to it.

By the Court: Now you say they were fitted to determine the distillation and the specific gravity and the coloring. Now how would they determine what it was, where did they get that.

A. That might have been their own conception of it.

By the Court: Now were they instructed as to that by their superior officers who were expert chemists?

A. I cannot say I don't know about that.

By Mr. Swacker: May I ask another question?

By the Court: Yes.

*Examination by Mr. Swacker.*

Q. They had nothing to do with the classifying of this material? A. No, sir.

Q. That was no part of their work? A. No, sir.

Q. All they were there for to determine or ascertain what the distillation was, what the gravity was and what the color was and record that? A. Yes, sir.

Q. And that was the classification so far as any classification was made? A. Yes, sir.

Q. There was no classification by name? A. No, sir.

By the Court: Now, it is competent, after the processes of making these records, I hold the evidence shows they were expert enough to determine the specifications, gravity and the distillation and as to the coloring by these processes. I will let that much go to the jury. Now then you can introduce as to the name of it, you will either have to show that was done by an expert or they were instructed by an expert as to the names to meet the tests to determine by it.

By Mr. Swacker: Then will the court ask the jury to disregard those entries.

By the Court: These entries have not been introduced, the jury don't consider anything except what is admitted in evidence before them. That is merely a predicate thus far and not admitted to the jury and merely shown to the witness for directing his attention to a question.

*Examination by Mr. Payne.*

Q. Now, Mr. Timmons, is it or is it not a fact that these laboratory inspectors had instructions from their superior officers in that department, that when the gravity was fifty-seven or better, and when the distillation test showed a certain initial boiling point and a certain end boiling point, namely one hundred and forty as the initial boiling point and 428 as to the end point, I mean as to the initial boiling point, 140 or lower, that the liquid was gasoline?

A. I didn't get all that.

The Court: Read the question over to him.

(Question read by the reporter.)

A. I don't know whether they got them instructions or not.

The Court: Well, what is your best recollection about it?

A. I had instructions, my instructions would call for it; if they come within the required specifications I would call it gasoline.

Q. Well, are they the required specifications that I enumerated in my question?

A. That might be one of them.

Q. If I didn't state all of them, you state all of them.

A. There are so many of them.

The Court: State all you can remember.

A. There is a South Carolina test—

The Court: Go ahead now.

Mr. Swacker: May I suggest that he takes some one in particular, there are a number of kinds of specifications.

The Court: The test used there.

Mr. Swacker: There are a dozen different kinds.

The Court: I will permit him to ask the test they use there and the test they gave these inspectors.

A. One specification is not more than sixty-one gravity, not lower than 130 end point and 390 dry, and 25 color, not less than 130 over point and 390 dry.

Q. We are trying to get this first specification. I am asking you with reference to the determination and the purpose of the entries on these daily reports of the tests made, as to what determined your entries upon this sheet. I am not talking about your specifications for shipping the stuff out.

Mr. Swacker: I object, he said he did not make these

sheets and did not know what the instructions was to the boys.

The Court: Turn the witness over to me, I think I can get it. Now, why were those entries made on the sheet and the names put there?

A. Put there, I suppose they were put on there on account of the gravity, that is why they called it gasoline.

Q. Why were these records kept?

A. Just to refer to, that is all, daily records, we could look back.

Q. They were permanent records of the Gulf Refining Company? A. Partly.

Q. Were those records made daily? A. Daily.

Q. Well, now if a daily record was made, whose duty after they were made was it to inspect the records?

A. I looked after it in my end, two or three men looked after it.

Q. Were these records in your end of it?

A. No, sir, in the laboratory.

Q. Whose duty was it, after the day's business was closed, or after the period passed, to inspect the records?

A. I think that would go up to the man in charge of the laboratory.

Q. The chief officer of the laboratory? A. Yes, sir.

Q. Now, why would he inspect the records?

A. Maybe asked for a report, asked for inspection, turn in reports, to the main office.

Q. What do you mean by the main office?

A. The general superintendent's office, the manager's office, that is the main office.

The Court: Now, I find on this, it says, "Report of tests made Thursday, April 11, 1918; test number; kind of oil, tank number, still; gravity, flash; vis; what does that mean?"

A. Viscosity.

The Court: Cloud; color;" now where do you see—it says 617 gravity, what does that mean?

A. Well, that is sixty-one and seventy hundredths, that red line there you see.

The Court: Oh, yes. Now, these names were put on at the time of the inspection and the time the specific gravity was determined and the color determined?

A. Yes, sir.

The Court: And then the reports went to the superior officer in the laboratory?

**A. Laboratory.**

The Court: And when they went through his hands, where did it go to from there?

A. I think it went over to the main office.

The Court: To whom in the main office?

A. The general superintendent, I think he was about the only one who got a copy of that, it was out of my line.

The Court: Go ahead.

*Examination by Mr. Payne.*

Q. Mr. Timmons, as pump house foreman did you have charge of pumping light oils from one tank to another, from a tank to an agitator, from the agitator to the steam still, from the tank cars, from tank cars to tank steamers; did you have charge of all pumping? A. Yes, sir.

Q. I will ask you whether it is a fact that the daily tests are made as to the contents of each tank containing these light oils for the purpose of determining your pumping?

A. Yes, sir.

The Court: What do you mean by determining your pumping? What do you mean by that?

A. Well, where to put the different grades of oil. That is one thing we depended on the gravities and flashes.

The Court: You mean what tank to put it in?

A. Yes, sir.

The Court: You mean you had it inspected before you put it in the tanks?

A. Yes, sir.

*By the Court.*

Q. You had the cars, say the cars were shipped from Kiefer, you had them inspected and then afterwards took the inspection and report on it and then you would determine what tank to pump it into?

A. Yes, sir, part of the time, maybe it was storage and I would throw it in either one of the tanks.

The Court: That is, on storage?

A. One day might put it all in 805 and the next day part in 805 and the next day put it in the other tanks. Just a case of storage on those cars.

The Court: Would you put it in the tanks regardless of the specific gravity, regardless of the color, regardless of the distillation?

A. Regardless of all except the color, I wouldn't want to put the color in those tanks.

The Court: Go ahead.

Q. I want to ask whether you know when the initial boiling point of the tank is 140 or below the end boiling point is 428 and the gravity is 57 of the particular tanks the inspector had general instructions to denominate that oil gasoline?

A. I don't know.

By Mr. Payne: I ask leave to cross examine the witness.

Q. Did you not so state to Mr. Stewart?

A. No, sir, I don't believe I did.

Q. Don't believe you did?

A. Don't think so. I know I am positive I am pretty sure I did not.

Q. Do you know what would determine whether the liquid in a particular tank was gasoline or not?

A. I would know by a full test of it. I would determine by that.

Q. Is it not a fact—is it a fact that after the inspectors at the laboratory had made their tests they advised you what the results of their tests were and you advised them what the liquid was? A. Not generally, no.

Q. Well now how often would that occur?

A. That would happen maybe once in a great while where one would need such specifications to know what was going to be shipped out.

By the Court: Now when they asked you—why would they ask you?

A. Why I might have called them up and told them to give me a distillation, a full test on 805 tank and they would tell me what it was and I would say I am going to use it for southern gas then.

By the Court: You mean by that they would give you the distillation they had already made?

A. Yes, sir, and I said alright I might use that for southern gasoline today, I might use it for New Orleans gasoline today or might use it for Philadelphia gasoline.

By the Court: Go ahead.

Q. Now you had certain oils of various grades in these different tanks, did you not? A. Yes, sir.

Q. You had orders from customers for gasoline and naptha and other oils calling for certain specifications, is that a fact? A. Yes, sir.

Q. Then was it not necessary for you to determine what

was in these particular tanks in order to get a commodity that would meet those specifications? A. Yes, sir.

Q. So that when you made the tests to determine what was in the particular tanks did you make it in reference to order from your customer or did you make it for the purpose of ascertaining what stock you had on hands?

A. Mostly for what stock I had on hand at the time.

Q. Now in determining what stock you had on hand what were your instructions, how did you arrive at the determination as to whether a particular tank contained gasoline?

A. Well when these distillations were made and they made the distillation tests, I knew what they were. I was governed by the distillation tests.

Q. What were those tests as to which you made the entries concerning a particular tank of gasoline?

A. Well, as I said it before, if a tank was around a 60 or 61 gravity and it was less than—or not more than 130 initial or 390 dry I knew I had a New Orleans gasoline on hand.

Q. You testified these inspectors would get their sample and make their test and would ordinarily make the entries on these sheets. Now is it not a fact that when they were in doubt as to how they would enter a particular oil, for example as to whether it was gasoline or not they would call you up on the phone or confer with you as to how it should be designated on these sheets?

A. There wasn't a general practice of that.

Q. Did that ever occur? A. Sometimes it has.

Q. How often? A. I don't remember.

Q. Once or twice a week? A. No, I don't think so.

Q. Well, did it occur oftener than that?

A. No, might have been a green man coming in there or somebody that wasn't doing that class of work and he might call me up and want to know what was in the tank.

Q. Did these inspectors use their own judgment as to what they would denominate it or did they demoninate it this thing or something else on instructions from their superior officer.

By Mr. Swacker: I object, he has already testified.

By the Court: Did they do it on specifications or did they do it on instructions or would they use their own independent judgment or follow specifications or were they to follow specifications in denominating it?

A. I think they used their own judgment the biggest part of the time.

By the Court: Use their own judgment independent of the specifications?

A. On that report.

Q. What?

A. On that report they were going by gravity as I said before, that is what they call gasoline by gravity.

Q. They were going by specifications?

A. You could say specifications.

By the Court: They were going by gravity, and distillation and color specifications, that way to determine it.

A. Well, I don't know, that record there don't show any distillation.

By the Court: But it shows color and gravity?

A. Yes, sir.

By the Court: And from that it would indicate that they were going on color and gravity specifications?

A. Right there it looks like that.

Q. Will you state just what you mean by gravity, just explain for the benefit of those present who might not just understand what it is?

A. That means so many degrees lighter than water when you speak of 60 gravity, it is so many degrees lighter than water.

Q. No- do you universally, generally work the Baume scale on your hydrometer? A. Yes, sir.

Q. Explain how you get the gravity of a particular oil?

~~A. There is a hydrometer about I should judge fourteen inches long and at the bottom there is a little piece of bulb filled with mercury and a hollow tube running I judge about eight inches long and that is hollow and that tapers down to half the size of a lead pencil and from where it tapers down there is a scale on it running from 59 to 71 and 59 would be a fraction of every degree up to 61. You take this thermometer, an ordinary thermometer, one made out of glass, covered to go into a test tube or gravity jar and the oil is put into a gravity jar and the temperature is taken, first noting the temperature, you put a hydrometer in there—to find the temperature, say for 60 temperature—say the temperature was sixty. Then you put the hydrometer in there and it reads sixty-one, the little mark on the glass instrument there said sixty-one, we know that is sixty-one gravity, although the difference in temperature varies the gravity, the higher the temperature means a lower gravity. The oil expands and will let your tube down in it lower and you figure back to sixty. It is a standard rule adopted throughout the country.~~

Q. In other words, to get accurate results you must take the gravity always at a certain temperature?

A. The gravity at a certain temperature.

Q. Now suppose the oil was quite a heavy oil like crude oil, about what would the gravity of that be?

A. Well, that all depends. Say the gravity of crude oil we are running would be about thirty-five gravity.

Q. So the lower the gravity the heavier the oil is?

A. Yes, sir.

The Court: Now suppose when you take the color test it shows the color was flawless, would that indicate then that further distillation was not necessary?

A. Yes, sir.

The Court: Now this superior officer that this report was sent to in the laboratory, was he a chemist?

A. Yes, sir.

The Court: Go ahead.

Q. What type of color apparatus did you use for determining the color of light oil?

A. Why, as I told you, this—.

Q. The name of the machine?

A. To tell the truth, I don't know, I never paid any attention, I have been there for the last eighteen or nineteen years and I don't know.

Q. Now will you explain to the jury just how you measure color?

A. Well, this tube is divided up into—one tube is divided up into inches and fraction of inches, and a scale on the outside of the tube and when there is twenty inches of oil in this one tube there is a glass reflector underneath and at the top a little magnifying glass and two tubes, one is practically empty and there is a little blue disc that is to give the perfect rays of light, and reflect the light into this disc. It will be the same as purely distilled water, perfectly flawless, what we call water white color. Now we put the gasoline or kerosene or whatever we are taking color of—this machine is only used for gasoline and kerosene—when you put your oil in this tube and if there is a perfect match when the glass is full we have what we call twenty-five plus; that means it is better than the water white oil. If it gets down sixteen or under we look at the scale. Expert chemists will describe sixteen, we call it twenty three and so on down, if she goes to eight then you change the disc and then further on down you get on down to zero oil. It all depends on the grade of oil you are running.

Q. How did you describe the perfect color?

A. When they both match, when they were perfect and the oil was twenty-five oil.

Q. How did you express what the twenty-five oil looked like?

A. Flawless, distilled water.

Q. You mean when looking through it?

A. When looking through it the same as looking through empty space, the same as water.

Q. And you say that that color is twenty five?

A. Yes, sir.

Q. Now suppose it wasn't quite so good, how would the tints run?

A. Well, it wouldn't change much till you get down to twenty. You will hardly detect it. It will take an experienced man to tell.

Q. Down to twenty, including twenty?

A. Different grades of oil have different tints.

Q. So that the colors anywhere between twenty and twenty five are practically indistinguishable to the inexperienced man?

A. Yes, to an inexperienced man.

Q. What would the color be like if it was, say fifteen?

A. It would have a yellow cast to it.

Q. A yellow cast? A. Yes, sir.

Q. Would it be very dark then? A. No.

Q. What would the color of crude oil be, I don't suppose you have any colors that low?

A. You couldn't run them on that machine. The rays of light wouldn't go through it. You can't get rays of light through anything black.

Q. That is only for the light oil? A. Yes, sir.

Q. About what would the color be if the color would be two?

A. That would be pretty dark.

Mr. Swacker: Compared with the lamp shade?

A. Would be worse than that, might be good and dark, just good red amber color. When you get down to two you might just as well call it zero oil. Two don't mean anything, just as bad—

Q. Perfect color is twenty five and shades down and gets darker as it goes down? A. Yes, sir.

Q. Did you ever have oil that was even better than twenty five? A. Yes, sir.

Q. How do you designate that?

A. Twenty five plus.

Q. Does it occur that the color is ever substantially better than twenty five? A. Yes, sir.

Q. Sometimes substantially better? A. Yes, sir.

Q. I notice an entry here "crude naptha." Just what is just what processes have been gone through to get crude naptha?

Mr. Swacker: I object to him testifying about that, he has not shown he knows anything about it.

The Court: If he knows.

A. Crude naphtha is a part of the oil off the crude still, was a crude as far down in my estimation, as far down as the kerosene cut it has a low boiling point.

Mr. Payne: Now we have some laymen here that don't understand that probably. You are speaking refinery language, perhaps we don't understand.

Q. What do you mean, a crude still? A. Yes, sir.

Q. What are crude stills?

A. There is a still for crude oil, crude oil is put into it and started on the way to refining.

Q. Is that the first thing you do, put it in the crude still?

A. Yes, sir.

Q. Now is the purpose in this crude distilling, really to separate the different components in the crude oil?

A. Yes, sir.

Q. As a result of the distillation in the crude stills what are the products *using broad terms*.

A. Well naphtha, kerosene—there are thousands of names you can call it.

Q. Did I understand you to say crude naphtha is the second cut from the crude stills? A. Oh, no.

Q. What did you say? A. First cut.

Q. The first cut? A. Yes, sir.

Q. What do you mean by the first cut?

A. The first that comes over after she is distilled after you put your fire under your still.

Q. Did you cut it off at any time?

A. We have a place we cut it off.

Q. Let me get this straight, is your crude still on the same principle as a whiskey still?

A. I never seen a whiskey still, don't know nothing about it. I suppose it is from what I heard in the court room.

Q. You put your crude oil in the still and then that distills and comes out of the still. A. Yes, sir.

Q. The flow begins? A. Yes, sir.

Q. Now you cut it off here and there, now what do you do with the first cut? A. Well that is—.

Q. Is it piped away and put in a tank? A. Yes, sir.

Q. Then what do you do with the second cut, is that piped away to a second tank? A. Yes, sir.

Q. Now taking the crude naphtha, it has been made from crude oil by the distillation process and put into the tank, now what is done in the next process of refining that article?

A. What the first cut?

Q. Yes? A. Well that is put back into the steam still.

Q. What is the purpose of putting it in the steam still?

A. To get the light edge off of that again.

Q. And then after it has gone through the steam still what is done with it next?

A. Why we use it for various purposes, that can be used for a thousand and one purposes, oh, not quite so many as that but quite a number of things, just depends on what we have to make.

Q. Now hold on, what is done with it after it has gone through the steam still, don't you have a treating plant?

A. That is a treating plant.

By Mr. Swacker: He has explained a number of things that may be done with it according to what they intend to make?

Q. Does it go from the steam plant into the treating plant?

A. Out into the continuous treaters.

Q. Then what happens to it next? A. On into the storage tanks.

Q. It is then ready for market? A. No, sir.

Q. What do you do with it after that?

A. It has got to be either blended or further refined as you might say.

Q. Now hold on, don't let's anticipate anything.

By Mr. Swacker: I object to that, he is asking the man and the man is answering him as fairly as he can.

By the Court: Never mind, go ahead.

Q. After it has gone through the processes you have mentioned the crude still, the steam still and the agitator, what further is done with it in the way of refining?

A. Well it might be—just depends on what grade I am running—might be further blended.

Q. Did you do anything else ordinarily? No, sir.

Q. After it has had those three processes? A. No, sir.

Q. What is the purpose of the blending which you might do?

A. To meet the specifications transported from one oil to another tank to meet whatever specifications I am required to ship.

Q. Can those specifications be met by the pumping from one tank to another?

A. Sometimes, sometimes you have to agitate and sometimes blow the tank to get the sample.

Q. You take a sample from it? A. Yes, sir.

Q. Naturally you have to do that, to ascertain the con-

tents of it, but aside from this blending is there anything other than is done to it before you ship it?

A. As it is in the tank?

Q. Yes, sir. A. No, sir.

The Court: Let's make haste. You are taking up lots of time.

Q. I notice an entry, "Painters' naphtha distillate," what is that?

Mr. Swacker: I object to that.

Mr. Payne: I will change that.

Q. What processes are gone through to get painters' naphtha? A. The same processes.

Q. The same processes as the other. That is to say, the oil is refined in the crude stills, steam stills and agitators, and then it is put in a tank and if it meets certain specifications you call it that. What are the specifications that enables you to determine whether it is painters' naphtha?

A. By the gravity and color.

Q. So that your painters' naphtha has been through all of your refining processes?

A. Some of it has.

Q. Some of it has. Well now that is a little bit different from what you testified.

Mr. Swacker: I object to those kind of statements before the jury. He certainly made no such statements at all.

The Court: I will let the jury determine.

Mr. Swacker: I would like an exception. I don't think that is proper examination.

Mr. Diggs: We now ask the Court to instruct the attorney for the Government not to make remarks about the nature of the witness' answers.

The Court: That is not a proper way to examine a witness. The way is to ask him if he didn't say so and so a while ago. That is the proper way to examine a witness. Proceed.

Q. What processes are gone through to get gasoline?

A. To make a good commercial product of crude—

Q. Strike that out.

The Court: I object to you leading that witness. Don't take up so much time, just ask the witness what you want, go ahead.

Q. In the making of gasoline as a finished product, gaso-

line coming through the same three processes as the painters' naphtha. A. Yes, sir.

The Court: Take the witness.

Q. What is the gravity ordinarily of the painters' naphtha, how does it run?

A. That was, I would say, I will give you fifty four gravity, average gravity.

Q. Fifty four?

A. It has been lower and it has been higher.

Q. About that, that is good enough.

Mr. Swacker: Mr. Timmons, how long have you been in—

Mr. Payne: Just a moment now.

The Court: Now, I am not going to wait on you, if you are going to examine this witness you will have to examine him.

Q. What processes are gone through—I will change that. Suppose a tank is naphtha distillate, what processes have been gone through to make that naphtha distillate?

A. It went through the stills.

Q. Which one?

A. Went through the crude stills and possibly through the steam stills.

The Court: Take the witness.

*Cross Examination by Mr. Swacker.*

Q. Mr. Timmons, how long have you been engaged in the oil refining business?

A. Been in—will be nineteen years the second day of October.

Q. How long have you been at that Port Arthur plant of the Gulf Refining Company?

A. I am virtually the oldest man at the plant.

Q. How long has the plant been there?

A. Since the previous June before I got there.

Q. How long ago did you get there?

A. Nineteen years ago the second day of this coming October.

Q. How large a plant is it, a very large refinery or just a small one?

A. An enormous plant.

Q. One of the largest in the country?

A. My understanding, it is the largest independent refinery in the country.

Q. That is, the largest other than the Standard Oil Company? A. Yes, sir.

Q. You spoke repeatedly of specifications, I am not trying to get any particular specifications, but what are these specifications you handled.

A. Well, there is northern gasoline, southern gasoline, motor specifications.

Q. What is motor specifications?

A. That is the specifications adopted by the United States government.

Q. Motor Transport Corps of the United States Army?

A. Yes, sir. Aeroplane gasoline.

Q. What is aeroplane gasoline?

A. That is used for aeroplane.

Q. Is that a specification of the United States Army?

A. Yes, sir.

Q. And what is the next? Fighting gasoline.

A. That is a specification adopted for the bombing planes as I understand by the United States Army, United States Aviation Corps.

Q. What is another specification?

A. A South Carolina Motor gasoline.

Q. What do you mean by South Carolina?

A. That is a specification adopted by the State of South Carolina.

Q. Is it a specification required to be met by the State of South Carolina? A. Yes, sir.

Q. Then is there one which is the Company's own standard as distinguished from the special specifications?

A. Yes, sir.

Q. What is that called?

A. Just called our specifications for gasoline adopted by the officials of the Gulf Refining Company.

Q. Is that not called "Good Gulf Gasoline?" A. Yes, sir.

Q. Are there any specifications by the laws of Texas governing gasoline, to be sold in the State of Texas?

A. I think there is. We met the specifications.

Q. How does the Gulf's specifications compare with the specifications adopted by the United States Army Motor Transport Corps?

A. Why, they are different.

Q. In what respect are they different?

A. Well sir, only ours refers to a over and dry and the army the other government specifications there is a fractional distillation as to being so much of a percentage over at so many degrees.

Q. What do you mean by fractional distillation?

A. That is the same thing I stated when they run it through this Engler flask, 100cc.

Q. Don't use terms as 100cc they don't understand it, tell them what the Engler flask is.

A. Same as a small still, a small still on a small scale, not more than half as big as that glass and that comes up in a small pipe and goes into tubes and at the top it is open and insert a cork with a thermometer in it and what we call a condensing tube leads off into a glass tube and that passes through a condenser and the fire is under and we put a small amount of oil in it and we watch and when the oil starts to boil you can readily see it when the oil starts to boil in it the same as water and it passes on through and condenses and you catch the first drop and you catch then the initial boiling point and that is what they term in this country the initial boiling point.

Q. Is that the same thing you call over point?

A. I call it overpoint. My readings.

Q. Well you watch your readings, government's specifications of it?

A. The specifications says if I remember rightly that at 221 degrees that the thermometer shows 221 degrees not less than 20 per cent distilled, must be twenty per cent of it that has been put in this little distill, must be distilled back into the receiving flask, this receiving flask is marked off and must not be less than 20 per cent. At 275 not less than 45 per cent must be distilled.

Q. That is when the thermometer is 275?

A. When this thermometer reads 275 not less than 45 per cent must distill. At 356 temperature not less than 90 must be received in this flask and that is three points we must meet. We must have not less than 20 per cent at 221, 45 per cent 275 and 90 per cent at 356.

Q. Now, is there some point at which it needs to have started?

A. Not less than one hundred forty. It might be over one hundred and forty. If it goes past one hundred forty it don't meet the government specifications; got to be over one hundred forty temperature and after this whole body has been distilled, as you see it all goes to vapor, that is your dry point, what you call end point. That means not to exceed more than 428 degrees Fahrenheit temperature. And all this is distilled over here must recover ninety five per cent. You must recover ninety five per cent of the amount you put in here, else it wouldn't meet the government specifications.

Q. Just what do you mean by recovery?

A. That is the amount distilled, the amount of oil you put in, one hundred c. c. in this case, we must recover ninety five cc. They give us a loss of five per cent.

Q. That is at the end of the process of distillation, there must be left ninety five per cent of the material you started with?

A. Yes, sir.

Q. And if it does not recover up to ninety five per cent it does not meet the specifications?

A. Yes, sir.

Q. Is there some further specifications in regard to color, we are dealing with the United States specifications.

A. Good water white color.

Q. What is that, twenty five? A. Twenty five.

Q. On this color machine you described a while ago?

A. Yes, sir.

Q. What is the name of that machine, Saybolt Colorometer?

A. I never did look at the name; I am ashamed to admit it, but I always called it the color machine.

Q. You dealt with the army specifications?

A. Yes, sir.

Q. Are these other specifications exactly the same as the army specifications, or are they different?

A. They are different.

Q. The various state laws sometimes control them?

A. Yes, sir.

Q. And sometimes it is the purchaser's own specifications? A. Yes, sir.

Q. Is anything regarded as finished gasoline unless it meets some specifications of that character?

A. No, sir, everything shipped must meet the required specifications.

Q. If no other specifications, then the company's own specifications is good Gulf gasoline?

A. Yes, sir.

Q. And gasoline is not in fact sold or regarded as gasoline except that it meets those specifications?

A. Yes, sir, that is right.

Q. And it is not regarded as gasoline until it meets those specifications. A. No, sir.

Q. Suppose you start to meet certain specifications, say the army specifications, and you are about ready to ship, what is the first thing you do, do you take the distillation test of the tank,—to see if you meet it?

A. A sample of the tank has been taken to see if it meets the army specifications.

Q. Suppose it has not met it?

A. Further blending has to be taken place, further blending would have to be gone through to meet the required specifications.

Q. Explain to the jury what the blending consists of doing with the oil, consists in doing with the oil?

A. The putting of one oil into the other and blending the tanks and getting a sample and running the distillation, that would be blending it, would be putting those two things together and mixing it.

Q. Well, are they mixed with some degree of care and design? A. Yes, sir.

Q. Or method? A. Yes, sir.

Q. Or just mixed recklessly?

A. No, sir, got to know where you are at.

Q. How do you know where you are at to mix it?

A. By having a distillation taken of the products I am going to mix.

Q. You explained to Mr. Payne a while ago that you have a distillation test taken of each of these tanks every morning?

A. Yes, sir, that is the reason for it.

Q. That is the reason of taking that distillation test to know the quality of material in each tank? A. Yes, sir.

Q. Now those tanks will contain, will they, material brought from the stills, from distilled crude oil?

A. Yes, sir.

Q. And you will have the specifications of each of those taken, whether it comes from Oklahoma, the unrefined naphtha, or whether it was gasoline in process of completion, made there at Port Arthur? A. Yes, sir.

Q. What do you do with these specifications that you have taken when you are going to determine on a blend?

A. I see what the tanks specify, I see that one tank I am going to make, that is going to be too heavy, and I have got to overcome the dry point. Well, I have got to put something in there that will overcome this heavier dry point. Maybe the next day, maybe before the same day is out, the overpoint might be too low, as I call it, distilling way down too low, or distilling too high. Whatever specification I am loading out, whatever orders I am filling, I have got to be governed according to these tanks and mix them accordingly.

Q. Now have you a distillation test of the unrefined naphtha as well? A. Yes, sir.

Q. Is that made on every car, or just made occasionally on an average?

A. In the earlier days we made it on averages, and then we later on, about twice a week, but now we are doing it daily.

Q. Now, do you ordinarily run those distillation tests—

The Court: Just a moment. The Court will be at ease a moment, the jury may be excused for 5 minutes.

Q. You were explaining to the jury how you would blend

this unrefined naphtha when you were preparing to meet some specifications, you said you had a test of the tank of the material with which you were going to blend unrefined naphtha and you also had a test of the unrefined naphtha? A. Yes, sir.

Q. Now were those tests of unrefined naphtha complete distillation tests? A. Yes, sir.

Q. Run all the way to recovery? A. Yes, sir.

Q. And as a matter of your experience over a period of time over which this material has been coming state what height of recovery you have ever known this unrefined naphtha to produce?

A. About 88 the highest and it has been as low as 76 and 80.

Q. In this question of specifications how important is a matter of recovery?

A. It is important enough, real important.

Q. Is it the most important element of the gasoline?

A. Yes, sir.

Q. Of the finished gasoline? A. Yes, sir.

Q. Why is it so?

A. If it is not there, it shows that there too light an oil mixed and come off in gas, or has been used, or has not derived its energy, evaporation, shows the evaporation, not only being used but sometimes in tanks, that is lost in evaporation the lighter quality is gone.

Q. It shows that the purchaser is not going to get anything like a hundred per cent recovery? A. Yes, sir.

Q. In the sense of mileage of automobiles or while in storage loss due to evaporation? A. Yes, sir.

Q. And so it is a vitally important element to the user or purchaser of gasoline that it will meet the recovery specifications? A. Yes, sir.

Q. And you say the company's own standard is 95?

A. Yes, sir.

Q. And the United States Government standard is 95?

A. Yes, sir.

Q. Do you have any specifications that run below 95?

A. I have never heard of them, I don't remember ever seeing any.

Q. You have never known unrefined naphtha to run above 88? A. To the best of my knowledge it never has.

Q. In the state in which it arrives from Oklahoma, it would be seven per cent short of the recovery universally required in all finished gasoline produced in that plant?

By Mr. Gann: If your honor pleases—

By the Court: I think that is going a little too far

in that character of questions. It is a compound conclusion propounded and framed in the question.

By Mr. Swacker: I will make it more simple.

Q. You say all the unrefined naphtha all the unrefined naphtha you have ever known to come there from Oklahoma was at least seven per cent short in the recovery specifications which are the specifications used by the company.

By Mr. Chambers: If the Court please, pardon me. I don't think this witness should be led by an attorney.

By the Court: I don't think that is proper.

By Mr. Chambers: He is leading the witness all the way through.

By Mr. Swacker: He was examined on direct in that fashion and we made no objections.

By the Court: You have asked him this question as what is the highest as to the naphtha from Oklahoma; he says 88 you have got the other. This other is a conclusion, a matter to be presented to the jury.

By Mr. Swacker: I believe the criticism is good.

Q. Now then do you frequently run unrefined naphtha to a complete distillation test or do you merely get the over and dry points?

A. Well get the over and dry points and the full distillation anyway two or three times a week.

Q. Now then what is your next step in blending, having ascertained the distillation tests of the gasoline, in the tank produced at the refinery that you are going to blend with the unrefined naphtha and having the distillation tests of the unrefined naphtha what is your next test?

A. Well I see how much oil is in the tank.

Q. How much oil is in the tank, which tank?

A. In the tank I am going to mix it. How much oil in that tank.

Q. How much of the refinery made oil?

A. The refinery made oil and the mixture, how much in that tank. I have got to know that to work my proportions what I am going to place in them and then I figure it out and start transferring.

Q. What do you mean, start to transfer?

A. Transfer out of the tank, I am going to mix in it, transfer that tank into the other.

Q. What do you mean by figuring out?

A. How much I am going to put in that tank.

Q. How much unrefined oil you will be able to put in the tank of the refined oil?

A. Yes, sir, I am just figuring roughly, I don't know.

Q. Does anybody know absolutely?

A. No, sir, there might be one man, I doubt if a man could hardly figure it out.

Q. Well you are down there with all these chemists and laboratory people did anybody figure out to your knowledge mathematically, exactly how much would be necessary to blend perfectly to come to a distillation test?

A. No, sir, not to my knowledge.

Q. What is it a matter of judgment rather than computation?

A. It is a matter of distillation. After the whole thing is done it has got to be retested to see where you fall off.

Q. Could anybody do it or test it without experience and judgment?

A. Well I have been at it six years and I don't say I am perfect yet. I would say it would take a man of considerable experience to do it.

Q. Do you always get it according to specifications?

A. I should say not.

Q. What is generally the case?

A. It is mostly incorrect, it has got to be done the second time.

Q. What is that correcting it? A. Correcting it.

Q. What do you mean by correcting it?

A. Trying to meet the specifications.

Q. And in what respect do you correct it?

A. Either correct the overpoint or the recovery of these fractional distillation in between.

Q. That is the distillation test made as soon as you have completed your tentative blend—if it doesn't meet specifications you notice or observe wherein it doesn't meet it?

A. Where it doesn't meet it and remedy it to that.

Q. And meet it at the overpoint? A. Yes, sir.

Q. Or at the fractional point? A. Yes, sir.

Q. Or it may meet at the recovery? A. Yes, sir.

Q. Or at the fractional point in between? A. Yes, sir.

Q. How would you proceed to correct it?

A. Go through the same practice again, figure it out again and put in whatever is needed.

Q. Now what is the practice with respect to the refinery gasoline that you use for this purpose of blending, is it more than specifications or less?

A. Must do better than the specifications.

Q. That is, the refinery gasoline which you are going to use to blend with the unrefined naphtha, is better than the specifications?

A. Yes, sir, we have to have something better to blend it; how am I going to overcome this recovery of the unrefined naphtha if I didn't have something better than ninety-five per cent recovery?

Q. In other words, it would be impossible to bring something to ninety-five unless you use a product that was over ninety-five per cent recovery to put with it? A. Yes, sir.

Q. You blend the so-called unrefined naphtha with super-refined gasoline? A. Yes, sir.

Q. You might bring it down to the recovery point but you might destroy—

Mr. Payne: Just a moment, I haven't heard that word 'super-refined' before, the witness hasn't testified that there was any.

The Court: I think that is improper.

Mr. Swacker: He said refined specifications.

The Court: Did you use that word before?

A. I don't think I ever used the word; you could call it super-refined.

The Court: I will strike that out.

Mr. Swacker: Well, the witness has testified that this exceeds the specifications.

A. Yes, sir.

Q. Now, will you describe that, use some word if you can to describe it as the character of refined, over-refined or what—

The Court: No, we are not going to appoint any new conditions here in this court at this time.

Q. What is it commonly considered?

The Court: That would be the specifications designated specifications designated for the gasoline that is intended to be refined, that is all that means.

Mr. Swacker: Yes, sir.

The Court: That looks to me like the question now is, I don't know what you are driving at—is it your contention now that no naphtha is refined until it is brought to the process of gasoline that they are going to ship to the market?

Mr. Swacker: No, sir.

The Court: What is your contention?

Mr. Swacker: Our contention is this, that this product is not gasoline until it is a finished product and that—

The Court: When is it a finished product?

Mr. Swacker: After this blending or correcting, until it gets down to meet the specifications.

The Court: You are bringing in other purposes then, although it might be such a product as could be used in some commercial market as gasoline, that until it is blended in this refinery to meet the specifications of the kind of gasoline they put on the market it would not be gasoline—is that what you mean?

Mr. Swacker: Yes, sir, we say it is not gasoline, and in the proper name of the finished product, but we are not going to have this witness testify as to the possible use of that material, but we will show it is not gasoline by any of the accepted standards, we will show by expert witnesses is what the accepted standard is, what they term to be gasoline or otherwise.

The Court: Go ahead.

Q. Now, you say the gasoline produced in the refinery, that you are going to use for blending, is in excess of the specifications? A. Yes, sir.

Q. And you judge how much of the unrefined naphtha you can blend with the quantity you may have available of the gasoline made, and that will only bring it to the specifications, bring it down to the specifications?

A. Yes, sir.

Q. Now, you say that the unrefined naphtha received no treatment, what do you mean by treatment, is that a technical word in connection with refining?

A. Treatment in any sense of the word means when it goes through a chemical act, and chemicals pass through it.

Q. That is a term as used in refining. A. Yes, sir.

Q. And you used it in that respect? A. Yes, sir.

Q. And that is an incident of the refining but not a necessary one? A. Yes, sir.

Mr. Gann: Let me understand it, you say it was or was not treated?

Mr. Swacker: He says it was not except in some instances, but generally it was not.

Q. Now, you also said in answer to a question of Mr. Payne, that you did nothing more but to blend the material, that is by blending it you include the re-blending and correcting which you spoke of?

A. Of course—

Q. That is, as to the cars which are blended and distinguished from those that go in the stills? A. Yes, sir.

Q. Now, these laboratory boys that have been spoken of here or testers, they are not inspectors, you have other employees that you call inspectors? A. Yes, sir.

Q. Now, what are the inspectors?

A. The inspectors of ones loading boats, they are there to see the boats are in proper condition to receive the order.

Q. And what else do they do in relation to it?

A. They pass upon the quality of the oil, whether it is fit for loading or not.

Q. And do they pass on it again after it is loaded?

A. Yes, they watch the process all the way through.

Q. How do they pass on it?

A. Well, the color and gravity and the flash and the viscosity all the way through.

Q. How do they ascertain those things, by samples and tests? A. Yes, sir.

Q. Now, in answering Mr. Payne's questions about inspectors you were assuming that he was referring to these laboratory testers? A. Yes, sir.

Q. And the answers were intended to refer to laboratory testers?

A. That is the name they ought to be called.

Q. Have they anything to do with the classifying of any material as gasoline or anything else? A. No, sir.

Q. All their office is simply to perform the mechanical function of testing it and putting down the tests? A. Yes, sir.

Q. And they merely use any name they use as a matter of convenience? A. That is what I would judge.

By Mr. Payne: I object.

By the Court: I think that is a very improper way to examine this witness. He is your employee. And I will call the jury and I charge the jury to the manner in which the witnesses are examined. I am going to see this testimony goes fairly before this jury.

By Mr. Swacker: That is all I want, your honor.

By the Court: The way to get this evidence out is to get it so there *were* be no reflection against its weight.

By Mr. Swacker: I want to get from this witness what the exact function of those testers is.

By the Court: You can ask him that, not suggest the answer in the question you ask. Go ahead.

Q. Do these testers have anything to do with the determining what anything they test is? A. No, sir.

Q. As a matter of a name of it? A. No, sir.

Q. What do they use any name they use, why do they use it?

A. It is commonly called around the plant.

Q. What is the practice as to what any unfinished material around the plant may be called?

A. Called distillate, in any sense of the word after it passes through the stills, it is distillate form.

Q. And as far as they are attached to any particular name or a kind of oil do those names follow the class of material?

A. Now, what do you mean by following the class of material? Well, now, it is in a kerosene tank that would be sunburst steam still stock or lustre stock still or one hundred Elliott steam still stock after it passes through the steam still and when it has made certain distillates it is called light—

Q. What do they call the material that is going to be made gasoline?

A. They will call that gasoline distillate. They call it gasoline distillate when it comes off of the still.

Q. After you have treated it they call it what?

A. Call it gasoline.

Q. Before you have made specifications?

A. They will call it that.

Q. And what will be the common practice around the plant?

A. They will call it that, that will be known—by gravity, possibly.

Q. Now, you said in answer to a question you would put this unrefined naphtha into a tank regardless of distillation, just what did you mean by that?

A. Well, I meant by that, even if I knew at the time this unrefined naphtha does not meet government specifications, would put it into a tank, we got the stuff to pop out, that is, put in a tank for storage and then it is transferred from that tank to wherever needed. I might put more stuff in this unrefined naphtha right then. Might be room in the tank to take care of it. Put in there principally for storage. But we haven't had equipment enough to keep it separate.

Q. Is there any instance of pumping in the shape of mixing that takes place in the tank? A. I don't get you.

Q. You spoke of air awhile ago, what is the explanation of that?

A. That is to agitate the tank for this mixing. You take a grade of oil, suppose I had 10,000 barrels of a light gravity gasoline that was in the tank and that was composed chiefly of unrefined naphtha and I would pump in a heavier grade of naphtha. That heavier grade of gasoline distillate, this heavier oil has a tendency to lay on the bottom of the tank it won't mix thoroughly with the oil, now to get this mixed air is blown in.

Q. Blown?

A. Air turned on compression the oil is thoroughly agitated and that mixes all grades evenly, the heavy and the light together, which gives a uniform gravity whereby you can readily get the distillation more accurately.

Q. What is your practice as to what this unrefined naphtha is called around the plant?

A. It is called everything.

Q. Give some of the names it is called.

A. Well, I have heard it called Kiefer gas.

Q. Kiefer gas?

A. Yes, sir, chain lightning, over the top, hold it in her, Gilbert; TNT; oh, so many names, just whatever happens to be in a man's mind, whatever comes to mind; one man might call it one thing and another call it another, and yet the head of the departments know what he is talking about.

Q. Now you said in answer to a question by Mr. Payne, a green inspector might ask you sometimes what name to apply to a sample he had used, was he asking you that as a matter of information or as a matter of instruction?

A. I think more as a matter of information, likely.

The Court: Proceed with the witness.

Q. Now, you said a while ago that this Sayboldt Colorimeter or this color machine was used only for gasoline and kerosene; did you mean to embrace naphtha?

A. All grades down to below a kerosene cut in any stage of the game, either refined or treated, any grade at all.

Q. What is the next process of refining; you have named a number of processes to Mr. Payne, of refining gasoline in the refinery, you spoke of the first cut off as a crude naphtha, being naphtha distillate, going through continuous treaters; go on with it to finished gasoline.

A. The last stage would be this last process, this blending.

Q. Then after that wouldn't there be an inspection?

A. There would be an inspection, you could call that a process. I consider anything done in the way of finding out or improving a product for market is refining; that is the way I consider it.

Q. You said painters naphtha had been through all processes of refining; by that are you referring to all processes to make it painters naphtha, or all these other processes?

A. Necessary to make it painters naphtha.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Are there also those processes to make it gasoline?

A. Yes, sir, certain processes to make gasoline.

Q. How long did you say you had been in the refining there?

The Court: He said nineteen years.

Q. When did you first hear of unrefined naphtha?

A. I heard first of unrefined naphtha—

The Court: The first time the term was used or called to your attention since you have been there?

A. The first shipment ever came in there, it was unrefined naphtha to me.

Mr. Payne: I insist on the witness answering the question.

A. I considered it was unrefined naphtha when the first shipment came in there.

The Court: When was the first time you heard the term used "unrefined naphtha" or you used in since you have been there with this defendant company during the nineteen years?

A. I used it in my own end of it ever since it first began coming in.

The Court: When did it first begin coming in?

A. 1913, something like it, 1914.

Q. How long have you been receiving at Port Arthur the product shipped to you by the Gypsy Oil Company, Gasoline Department, from Kiefer, Oklahoma?

A. I think since 1913 or 1914.

Q. Has the custom with reference to the unloading and testing as to which tank it would go to, as you testified to here yesterday, has that been the custom from the beginning?

A. Yes, sir.

The Court: I am not going to let you repeat, we are going to get through with this witness sometime.

Mr. Payne: I just wanted to bring that out.

Q. What was the term that the employees generally used in referring to this stuff from Kiefer?

A. I always called it unrefined naphtha, unfinished naphtha, in truth.

Q. Answer my question, please.

Q. I don't know what they called it, but by the book shows, they called it everything.

Q. What does the book show they called it?

A. They called it Kiefer gas.

Q. Was it not Kiefer gasoline? A. I don't know.

Q. Well, now—

By Mr. Swacker: I object now the books are the best evidence.

By the Court: Yes, if you want to call his attention to it.

Q. If he knows. Now when did you change—up until a certain time—a certain date—did you describe—how did you describe that stuff—how was the stuff described from Kiefer in your records?

By Mr. Swacker: I object to this.

Q. In his own records?

A. I called it unfinished naphtha.

By the Court: If the entries were made by him I will let you show them if you have. Let's get through with this witness it will take you all six months to try this case if left to your own inclination. Now when they get through just know what you are going to do and do this thing like clock work. You spoke of refinery gasoline and you describe it—

Q. You spoke of refinery gasoline and you described *the*, three processes it went through for refining? A. Yes, sir.

Q. Now is it a fact your refinery gasoline was blended after the refining processes were gone through?

A. The refinery gasoline is blended after.

Q. After the three refining processes are gone through?

A. Well, we blend it, we had it blended.

By the Court: He testified to that, he testified it was put through the processes and then afterwards it was put in the tanks in order to bring it up to 95 test and that he blended it then.

By Mr. Payne: I just wanted to bring out—

By the Court: I am not going to have this kind of business. You are going to get through with this case. This jury ain't a lot of fools.

Q. You spoke of stuff from Kiefer being called—T. N. T. what was that? A. Just a nick name.

By the Court: What do you mean by T. N. T.? Now that is a matter they brought out and very proper to cross examine on.

A. Somebody more than likely reading about this high explosive during the war calls it T. N. T.

Q. That is the stuff that is billed as unrefined naphtha?

A. Yes, sir.

By Mr. Payne: That is all.

(Witness dismissed)

By Mr. Gann: Your honor, please may the jury be excused while we get these documents.

By the Court: No, let's get some witnesses in here, call your next witness.

Whereupon, ARTHUR A. TOPPING, a witness called for and [ ] behalf of the Government, was recalled and testified as follows:

*Direct Examination of Arthur A. Topping by Mr. Payne.*

Q. State your name. A. Arthur A. Topping.

Q. Are [ ] the same Mr. Topping on the stand yesterday? A. I am, sir.

Q. You were testifying as to what the tariff extracts show as to the rates, counsel admit I understand the rates that were in effect on gasoline—

By the Court: I will hear their objections now about these rate sheets, let's get that in the record.

By Mr. Swacker: Let me have that.

By the Court: I am willing for you to have an exception but I want to know what I am passing on.

By Mr. Swacker: On each of the certificates made by the Secretary of the Commerce Commission it reads in substance as follows: I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached consisting of one hundred typewritten sheets contain true and correct extracts from the schedules therein more particularly described and—up to that point we have no objection but from there on we object.

By the Court: Read that to what you object.

By Mr. Swacker: "Said schedules having been filed with the Interstate Commerce Commission on the date specified in said papers and said extracts therefrom having been in force on the date and throughout the period indicated in said papers—

By Mr. Swacker: I am reading from exhibit No. 20 and each of the exhibits for identification they are substantially of the same—

By the Court: Now what is it you object to?

By Mr. Swacker: Object to that.

By the Court: Object to what.

By Mr. Swacker: We object to that portion of the

certificate which attempts to state when the schedules were filed and when they were in force and effect. We say that is a matter of law for the court to pass on and that the commission is not authorized to make any such certificate.

By the Court: I will let it be filed for the consideration for the court. It is a matter of advice for him but not a matter for the jury.

By Mr. Swacker: Now as to the individual figures of the certificate, each page shows not merely excerpts, as to which we are not raising an objection, from the tariffs but also contains a statement at the head of it. I am reading now from the first page of the bundle marked Government's exhibit 20. "Extract from F. A. Leland Agent, Southwestern Lines, Tariff No. 26-R, I. C. C. No. 889, said schedules having been filed on January 10, 1912, and the said extracts therefrom having been in force throughout the period from January 1, 1913, to July 31, 1913, both dates inclusive." Now we say that is merely a statement of the commission not authorized by law and it is irrelevant.

The Court: After you prove a rate filed and in force, the presumption is that it remained there until it is changed. I think that would be the law.

Mr. Swacker: That statement appears on each—we don't concede that that is the law.

The Court: You do not?

Mr. Swacker: No, sir.

The Court: If you have any authority on that I would be glad to see it.

Mr. Swacker: And each page of the exhibit which begins a new purported excerpt from a tariff, contains a similar statement. That is true of each of these exhibits. We desire to object to them on the ground of being incompetent, irrelevant and immaterial, not authorized by the statute authorizing the commission to make excerpts from tariffs. That objection is addressed to each of the exhibits 16 to 20 inclusive. And we have the further objection to make with respect to the excerpts themselves, or as to a part of them, that they contain other matters than gasoline and naphtha.

Mr. Payne: May it please the Court, if I might be allowed to interrupt, we have the original tariffs here that are filed with the Interstate Commerce Commission

and if they object to these, it is all right, we can have the witness testify from the tariffs themselves.

The Court: All right, let him testify from the tariffs and when the tariffs were filed. If he knows after an examination of the record, whether any other tariffs have been filed superseding that tariff, and he is an employee and knows and may testify to that.

Mr. Swacker: May we get the record straight?

The Court: I will sustain your objection as to all matters except what you admit, and they can prove the other by him. Proceed.

Mr. Payne: I don't know whether the witness is prepared,—

The Court: If he is not prepared, let him stand aside.

Mr. Payne: There is some parts—

The Court: No, not some parts, but let him stand aside and be ready and then come back. Have you another witness handy?

Mr. Payne: Yes, sir.

The Court: And during the noon hour you can know what you want and let him have the data and when the tariff was filed and promulgated and if you know whether or not it is still in force and effect, and all these things, and you will have them ready and not be like searching for a needle in a haystack.

Mr. Payne: Now I could ask him about some of the rates.

The Court: You don't make any point on the rates.

Mr. Payne: I mean the other rates, I have had him examine those and I can ask him about those rates.

The Court: Go ahead.

Q. Is the rate there in effect on—

The Court: Show that he has the original tariff before him and let's lay the predicate so they will not be objecting and killing a lot of time.

Q. Have you examined,—

The Court: Have you got the original tariff sheet before you?

Q. That is it—have you got the original tariff sheet as filed with the Interstate Commerce Commission before you?

A. No, sir.

Q. I understood you have?

A. There is a trunk full of them there, Mr. Payne. I brought every one of the tariffs with me, they are in my trunk. It will take about two minutes to get them in here.

The Court: Well, you had better let him stand aside, if they insist on it, and they are going to insist on that.

Mr. Payne: All right, the witness is excused for the time being.

(Witness excused.)

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Whereupon GEORGE ANDERSON, produced, sworn and examined as a witness on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Anderson.

A. George Anderson.

Q. Where do you live, Mr. Anderson?

A. I live at Broken Arrow.

Q. What is your occupation?

A. I am constructing gasoline plants and operating them.

Q. Whom are you employed by?

A. By the Kadeshan, Totem and Shade Gasoline Company.

Q. What position do you occupy with the Totem—state first, what do you mean by the Totem, the Totem what?

A. Totem Gasoline Company.

Q. State your position with the Totem Gasoline Company?

A. I am general superintendent over the four plants.

Q. Where are the four plants located?

A. The Totem is at Jenks, the Kadeshan and Shade at Stone Bluff, and Kadeshan No. 2 is at Broken Arrow.

Q. Now referring to the plant at Jenks, state what kind of a plant it is and what you produce.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial. The Gulf Refining Company—

The Court: What is the purpose of this offer?

Mr. Payne: Your Honor, certain counts allege discrimination against the Totem Gasoline Company in that—I will state it if you want me to.

The Court: Yes.

Mr. Payne: In that they shipped casinghead gasoline and billed it on the railroad as casinghead gasoline

or gasoline, and they paid the gasoline rate, and we will show that their product is precisely the same product.

The Court: Very well, get your objection.

Mr. Diggs: We object as being incompetent, irrelevant and immaterial, not within the issues of this case, and not being shown that the Gulf Refining Company is connected with or interested in any of the plants with which the witness has said that he is connected, and that their practice and method of shipment would be hearsay as far as the defendant in this case is concerned.

The Court: I will allow your exception.

Mr. Diggs: Exception.

Q. What kind of a plant is it, Mr. Anderson?

A. It is a compression,—

Q. Compression what? A. Gasoline plant.

Q. Compression Gasoline plant? A. Yes, sir.

The Court: You want to confine this to the period named in the indictment.

Q. During the period from January 1, 1918, to June 1, 1918, did the Totem Gasoline Company of Jenks produce casinghead gasoline?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not within any of the issues raised in this case, and the defendant is not shown to be connected with any such plant.

The Court: The objection is overruled.

Mr. Diggs: The defendant excepts.

A. (No response.)

Q. State briefly the process by which you produce casing-head gasoline, very briefly?

Mr. Diggs: We object—hold on.

The Court: Have your objection on the same ground, the objection is overruled and exception noted.

Mr. Diggs: In order to preserve the record, and under some of the rulings we have to state what our objections are. To state we have them on the same ground does not amount to anything.

The Court: On the same ground as stated above, just say the same objection made on the same ground as above, and the same ruling and exceptions allowed.

Q. I asked you how you produced—

By Mr. Diggs: The defendant in this case states his

objection in that manner owing to the direction of the Court.

By the Court: That will be allowed as if set out word for word as above. Go ahead, let's get through.

Q. Answer the question, Mr. Anderson?

A. Produce the gasoline by the regular system of compression plants.

Q. That is go ahead, tell how you get the gas out of the well and what is done with it?

A. It is pumped to the plant by vacuum pumps.

By Mr. Diggs: To which we object on the same grounds stated above.

By the Court: Same grounds set out specifically as above and the objection is overruled and exception saved.

Q. Go ahead Mr. Anderson?

A. And is discharged from the vacuum pump to the compressors which run from a low stage to 40 or 50 pound pressure, whatever your load is and then goes to the high stage which is compressed from 375 to 400 and then put into the coils and condensed and the accumulation of that condensation is what makes the raw gasoline.

Q. Now after the raw gasoline is produced do you blend it with any product? A. Yes, sir.

By Mr. Diggs: To which we object—

By the Court: Objection on the same ground overruled and exception saved.

Q. What do you blend it with?

By Mr. Diggs: Same objection and exception as above by direction of the Court.

By the Court: Overruled, exception saved.

A. Blended usually with naphtha.

Q. Do you weather it after you blend it?

A. If the vapor tension is too high to ship.

Q. Well now what do you mean by vapor tension?

By Mr. Diggs: To which we object as being incompetent and immaterial, not relating to the issues in this case.

By the Court: Overruled, exception saved.

A. The vapor tension is the pressure that gathers on the tank after it is confined from agitation or raising of the temperature.

Q. Why do you weather it, in order to lower that vapor tension?

By Mr. Diggs: To which we object as incompetent,

irrelevant, and immaterial, the witness not being shown to act under direction or in concert with the defendant in this case. The manner in which he operates this plant being hearsay and immaterial to this case.

By the Court: Objection overruled, exception allowed.

Q. I want to bring out for what purpose you lower the vapor tension?

A. To make it safe in shipping.

Q. What are your shipping rules in reference to the vapor tension if you know?

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not the best of evidence; hearsay as far as this defendant is concerned.

By the Court: Well I will sustain it on the ground it is not the best evidence.

By the Court: I presume these shipping rules are prescribed by the Bureau of Mines.

By Mr. Gann: By the Interstate Commerce Commission.

By the Court: Well the Interstate Commerce Commission.

Q. How did you describe this product for shipment?

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay as far as the defendant is concerned and not the best evidence.

By the Court: I will permit to state how it is billed out. I will permit you to introduce the shipping orders.

By Mr. Payne: I have sent for them, they will be here in a few minutes.

By the Court: Alright, it is now 12 o'clock, gentlemen of the jury you will be permitted to separate during the noon hour under the usual instructions, let everybody keep their seats until the jury goes out and you may now go until 1:45.

(Whereupon Court took a recess until one forty-five o'clock p. m.)

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#### AFTERNOON SESSION.

April 14, 1920.

Whereupon, Court having convened at 1:45 P. M., pursuant to adjournment, and the jury having been called

and all found to be present, and counsel on both sides announcing to the Court they were ready to proceed with this cause, the following proceedings were had, to-wit:

Whereupon Mr. GEORGE ANDERSON was re-called for further direct examination by the Government:

*Further Direct Examination of Mr. George Anderson, by Mr. Payne.*

Mr. Payne: Mr. Reporter, mark these two papers Government's Exhibits 22 and 23.

(Said papers were so marked by the Reporter.)

Q. Mr. Anderson, I show you two papers marked Government's Exhibits 22 and 23—pardon me, Mr. Diggs—and I will ask you to state what they are. I will show them to you in just a moment.

The Court: Answer the question.

A. They are forms of bills of lading we use in billing out our product from our gasoline plant.

The Court: Is that a bill of lading used by them?

A. Yes, sir.

Q. Are those bills of lading in your handwriting, Mr. Anderson? A. Yes, sir.

Mr. Payne: I offer these in evidence—I beg your pardon.

Q. State if those shipments were shipments from the points shown on those bills of lading, and state to whom the shipments were consigned and who they were consigned to.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial and not the best evidence.

The Court: Not the best evidence, why?

Mr. Diggs: To ask him what they state.

The Court: Here is the way it looks to me—the way to get that in.

The Court: What do you want to do now?

Mr. Payne: I offer these in evidence. Strike that out.

Q. State if you shipped the cars referred to in these bills of lading?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.

Q. Do you know what was loaded in those cars?

A. Yes, sir.

The Court: Now I will let you prove and describe what was in them, the kind of commodity it was.

Q. Mr. Anderson, describe what was in the cars.

A. It was blended gasoline.

Mr. Diggs: Hold on—to which we object as incompetent, irrelevant and immaterial, hearsay, and this witness has no authority to constitute evidence against this defendant.

The Court: I will instruct the jury that this evidence will not be considered as any evidence proving as to the name of this material. It will only be introduced for the purpose of showing these shipments, so that if afterwards you find from the evidence submitted to you that what was shipped was not in fact under the rules of law was not in fact unrefined naphtha but was gasoline, that then that lays a predicate on the question of discrimination, but it is not to be considered as any evidence on the issue as to whether or not the commodity that was shipped under these indictments was gasoline.

By. Mr. Chambers: I want to offer this suggestion: there are certain methods prescribed by the authorities as the name under which the commodity shall be expressed in the tariff and as to the name under which certain commodities shall be shipped. The rule as I understand as laid down by the United States Supreme Court is that it is the Commercial Designation of the commodity itself as the test rule by which you determine.

By the Court: This don't prove anything except to lay these predicates. You have these witnesses here. This recital in here that this is gasoline is not evidence that the other was gasoline.

By Mr. Chambers: I was just presenting the rule that I understand the Court laid down.

By the Court: If you have any authorities I will be glad to look at them.

By Mr. Chambers: Yes, sir, I have them.

By the Court: Go on with this witness and let's get through.

By Mr. Diggs: Note my exceptions to the ruling of the Court.

By the Court: Describe what that commodity was described in the bill of lading. What it is, where it came from

and what it was from and then I will let you go further, probably. You know how to answer that.

By Mr. Diggs: Was that a question to the witness.

By the Court: You have your exceptions.

By Mr. Diggs: Not to that question.

By the Court: You may have your exceptions to it on the same grounds named in the other.

A. It was gasoline blended with naphtha of 72 gravity, 72 to 71 gravity.

By the Court: What was it made from, that is the question.

A. It was made from casinghead gas—natural gas.

By the Court: How?

A. By compression system.

By the Court: Had you done anything else to it in any other way.

A. No, sir.

By the Court: Now you may go ahead.

Q. State how that shipment of that product that you have described was billed?

By the Court: Did you ship any of it anywhere, ship any of it to Port Arthur.

A. Yes, sir.

By the Court: From Jenks?

A. Yes, sir.

By the Court: Now go ahead.

Q. State how the shipments were described.

The Court: Now, have you got the bill of lading of that shipment?

Mr. Payne: These are the bills of lading.

The Court: Is that the bill of lading?

A. Yes, sir.

The Court: Now, identify it.

Q. Do you identify that as being in your own handwriting? A. Yes, sir.

Mr. Payne: We offer these in evidence.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not being a purported bill of lading, but an instrument made in the handwriting of the witness, not of the railroad company nor its agent.

The Court: Let me see it.

Mr. Diggs: And the evidence of the witness shows—on the further ground the evidence of the witness shows the material shipped was not gasoline but casinghead gasoline.

The Court: Who is George Anderson, is that your name?

A. Yes, sir.

The Court: Now this is not a bill of lading, this is a shipping order.

A. That is what we use for a bill of lading.

The Court: Who gave you these?

A. My company.

Q. Is that your order to the railroad company to transport those cars. A. Yes, sir.

The Court: Well that is what is known as a shipping order.

Mr. Payne: They don't distinguish it, your Honor. They call them duplicate originals. I offer these in evidence.

The Court: Well, let them make their objections.

Mr. Diggs: We object as being incompetent, irrelevant and immaterial, and hearsay as to this defendant; on the further ground that the cars described here are not shown to have been received by the railroad mentioned, or to be gasoline or to have been transported in interstate commerce.

Mr. Payne: Your Honor, this is the beginning, we will follow that up.

The Court: Very well, let them be introduced in evidence, and let the record show it as read.

Mr. Diggs: Oh, I don't care about it being read your Honor.

Q. Have you any machinery or appliances or any other apparatus at Jenks for the purpose of accomplishing anything else than to compress casinghead gas into gasoline?

Mr. Diggs: To which we object.

The Court: Now, what is the question.

(Question read by the Reporter.)

The Court: That is immaterial whether they have or not. He has testified that this commodity shipped by this order, that the only thing he did to it was by compression.

Mr. Payne: I just wanted to show, your honor, in view of the two descriptions, that they were one and the same thing under certain circumstances. You will notice gasoline and liquefied petroleum gas. I wanted to pin those down to show that they are one and the same thing with different vapor tensions.

The Court: Well, if you want to make him an expert witness—

Mr. Payne: No, sir.

The Court: Well, you can't do that by comparison unless he is an expert.

Mr. Payne: I just wanted to bring out that he did not have anything there other than the casinghead gasoline plant.

The Court: Why is that material?

Mr. Payne: It is a distinction that will come up in the tariff.

The Court: That was permissible for them to show what they had there, but now he says, he says how he made it and that was all that was done, and you are laying the predicate. If they come back and join issue, that might make it competent, but it is not competent now and I will not permit it.

Mr. Payne: Very well, your honor.

Mr. Chambers: The citations are on those three sheets of paper you have in your hands, your honor.

Mr. Payne: There is just one further question.

The Court: Go ahead.

Q. Mr. Anderson, prior to this lawsuit did you ever hear of unrefined naphtha? A. No, sir.

Mr. Diggs: Just a moment. To which we object as being irrelevant, incompetent, and immaterial.

The Court: He is not an expert. Unless you qualify him as an expert I will not permit him to testify to that.

Mr. Payne: I just wanted to show the trade and custom.

The Court: But you first have to show,—you have to put a man in a position so that he would probably have heard it. It is just like,—no, I will not permit you to ask that.

Mr. Chambers: He is a man engaged in that particular business.

The Court: You have not qualified him as an expert. No, it is just like asking a man if he saw a fellow down on Fourteenth street, without putting him in a position that he had been down there and he would probably have seen him on Fourteenth street if he had been there.

By Mr. Payne: May I call the Court's attention to the fact we have shown in a general way that Mr. Anderson operates the same kind of a plant at Jenks and he is the Superintendent of Fuller Casing Head Gasoline Plant. Is it not likely under these circumstances that—

By the Court: Not with this predicate laid. Just to show that he operates these plants. It don't show his experience and how much he has handled it and then from all these commodities have you heard this commodity called unrefined naphtha then it is competent but you have not got that predicate in there.

Q. Mr. Anderson, how long have you been engaged in the connection of producing casinghead gasoline?

A. Pretty near seven years.

Q. How long have you been superintendent of plants?

By the Court: Now you have first got to qualify him and let him state that he knows what it is and describe it and say what the proper name is. Then you follow that up. This is negative evidence. That is the office of negative evidence.

By Mr. Payne: I wanted to show the term unrefined naphtha was unknown in the casing head gasoline world.

By the Court: I will permit you to do that if you will show that he is an expert and familiar with gasoline. Knows gasoline and its terms and commodities and so on. But you haven't done that.

Q. Did you have any technical education Mr. Anderson in the University or college. A. No, sir.

Q. Your only training has been in the actual experience. A. Practical work.

Q. How many men have you under your—you are the superintendent of the plant, how many employees have you under you at all of your plants.

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial.

By Mr. Payne: Laying the foundation.

By the Court: Yes I would say so now. A man might be a superintendent and the very fact that he hadn't heard—that is carrying negative evidence too far.

By Mr. Payne: Alright, we will waive it your Honor, that is all.

*Cross Examination by Mr. Diggs.*

Q. When did you write the exhibit 22 and 23?

A. 4-30-1918.

Q. Did you ever present these shipping orders to the railroads, to the Midland Valley Railroad? A. Yes, sir.

Q. Yourself, you did that? A. Yes, sir.

Q. When did you present them to the Midland Valley Railroad? A. On the date described there.

By the Court: I want to get a little information, when they are made are they made in duplicate?

A. Yes, sir, four of them.

By the Court: You kept one copy.

A. These railroad *keeps* the original and I send the other three to the office.

By the Court: Go ahead.

Q. Do you know of your own knowledge whether the cars loaded mentioned in these two orders were in fact delivered to the Midland Valley Railroad Company? A. Yes, sir.

Q. You saw it delivered did you.

A. Well I could not say I saw them delivered.

Q. I am asking you about these two in here?

A. About them I could not say.

Q. About them you could not say. A. No, sir.

Q. Do you know whether the Midland Valley Railroad Company ever transported these cars? A. Yes, sir.

Q. How do you know it?

A. It was taken off our switch, our loading rack.

Q. They were taken off your switch? A. Yes, sir.

Q. Did you know of your own knowledge whether or not they were ever delivered?

By Mr. Payne: It is immaterial, but we will show by other witnesses that they were delivered.

By the Court: He can testify the reason why he said that, he said they set them out on the switch and they were moved away, from there—that is compound fact.

A. That is as far as I can say.

By the Court: That is the reason you say they were delivered to them and that they moved them?

A. Yes, sir.

Q. The substance in the cars mentioned herein was sold to the Texas Company F. O. B. the car was it not, or was it?

A. I cannot say.

Q. You don't know? A. No, sir.

Q. Do you know whether the Totem Gasoline Company ever paid the freight on the car mentioned in Exhibit 21?

A. No I don't know.

By the Court: He has not testified he did. Now you are travelling over territory that seems to me to be unnecessary because he never testified to that.

By Mr. Diggs: I know but he says they were shipped to Port Arthur. That is what I am trying to find out.

Q. Do you know whether they ever paid the freight?

A. No, sir, I do not.

Q. On the car mentioned in Exhibit 22?

A. No, sir.

Q. Do you know whether anyone ever paid it?

A. No, I know nothing of it.

Mr. Diggs: Now, if the Court please, we move to exclude the government's exhibits 21 and 22 on the ground—

The Court: I overrule the objection. I permitted it on the theory they are going to connect it up and follow it up.

Q. Mr. Anderson, I understood you once in your direct examination to say the substance in these cars, in answer to Mr. Payne's question, was blended; I understood you to say in answer to a question by the Court that they consisted alone of the product of your compression plant. What is the fact in that regard?

A. Sometimes we did ship straight run stuff and other times we shipped blended stuff, that is, blended with naphtha.

Q. Was the substance in these cars blended or unblended?

A. That was blended—well, one of them I couldn't say, the liquefied, I suppose, was straight run stuff.

Q. You suppose that the car in the shipping order described as liquefied petroleum gas was the native product of your compression plant, but the other one is blended. Do you know the proportions of the blend?

A. No, sir, not exactly. We had to regulate that according to the gravity of the gasoline.

Q. Do you know why you described one as gasoline and the other as liquefied petroleum gas?

A. Because the one went above ten pound vapor pressure; the one above ten pound vapor pressure was described as liquefied petroleum gas.

Q. What caused you to describe it when it was above ten pounds?

A. It was the rules we were given to load by, ship by.

Q. Given by whom?

A. Given by our office and the Commerce Commission.

Q. Given to your office by the Interstate Commerce Commission?

A. Yes, sir.

Mr. Diggs: That is all.

*Redirect Examination by Mr. Payne.*

Q. What did you mean by straight run stuff?

A. Well, unblended gas, no naphtha in it at all.

Q. You mean the straight casinghead?

A. Yes, sir.

The Court: Well now blended stuff, did you distinguish that as blended?

A. No, sir.

The Court: You took a quantity of the product from the casinghead gas gotten by compression, and then you mixed that, combined that with the naphtha; where did you get the naphtha?

A. The Texas Company at that time was furnishing us naphtha.

The Court: Got that from the Texas?

A. Yes, sir, I don't know whether it all came from the Texas, or where it came from.

The Court: Go ahead, take the witness.

Q. I notice on the shipping orders, Government's exhibits 22 and 23, that the printed form covers only two commodities, gasoline and liquefied petroleum gas, are they the only two products of your plant?

A. Yes, sir.

Q. State under what conditions you would ship your product as gasoline and under what conditions you would ship it as liquefied petroleum gas?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not a proper question, in that he does not state what he expects the witness to answer and indicate what he is after, but leaves the witness to exercise his own judgment as to what the process of the products were.

The Court: Yes, I think that is too indefinite a question. I sustain the objection.

Mr. Payne: All right, that is all, Mr. Anderson.

(Witness excused.)

Whereupon Mr. CHARLES McCARROLL, having been produced, sworn and examined as a witness on behalf of the United States, testified as follows:

*Direct Examination of Mr. Charles McCarroll, by Mr. Payne.*

Q. State your full name, Mr. McCarroll?

A. Charles B. McCarroll.

Q. Where do you live? A. Kiefer.

Q. What is your business?

A. Assistant superintendent for Crosbie and Gillespie.

Q. What sort of business is Crosbie and Gillespie in?

A. Well, compression gasoline plant.

Q. A compression gasoline plant?

A. Yes, sir.

Q. State as briefly as you can what your processes of manufacture are beginning with the gas?

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay evidence as to this defendant; it cannot be bound by the act or proceedings of others.

By the Court: What is the object of this evidence?

By Mr. Payne: There are five discriminate counts from Jenks and five from Kiefer.

By the Court: Their plant at Kiefer?

By Mr. Payne: Yes, sir.

By the Court: The objection is overruled.

By Mr. Diggs: We save our exceptions.

Q. Describe briefly your process of manufacture first beginning with the well?

By the Court: Get your shipping order.

By Mr. Payne: This witness did not make out the shipping orders, we have another witness for that.

By the Court: Let him stand aside and get that witness in here. Let's have some systematic process.

By Mr. Payne: I first thought I would show it was produced and then it was shipped.

By the Court: Go ahead.

Q. Go ahead Mr. McCarroll?

A. It was taken out of the well through a vacuum process, delivered to the plant and we put it through two stages, low stage and high stage, take the gasoline out and we blend into naphtha take about a third blended to certain gravity, deliver into tank cars and we are through with it.

By the Court: You get the casinghead gas from the well, and pipe it to your plant?

A. Yes, sir.

By the Court: And then you carry it through the compression process?

A. Yes, sir.

By the Court: Then blend that product with the naphtha?

A. Yes, sir.

By the Court: Go ahead.

Q. During the period from January 1, 1918, to June 1, 1918, did you manufacture some compression gasoline from the Texas Company?

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not binding upon this defendant.

By the Court: Overruled.

By Mr. Diggs: Exception.

By the Court: It looks to me like you could shorten this if you asked if he shipped any of this product to the Texas Company.

By Mr. Payne: Your Honor I want to show he sold it to the Texas Company at Kiefer and the Texas Company shipped it.

By the Court: Very well.

A. You want me to give the amount.

Q. No, just state whether you shipped anything during that period? A. Yes, sir.

Q. Whether you manufactured some compression gasoline for the Texas Company during that period and sold it to the Texas Company? A. Yes, sir.

Q. Do you recall the terms?

By the Court: Let me find out about that? Where did you deliver it to the Texas Company.

A. On the tank car on our siding.

Q. On your siding at Kiefer? A. Yes, sir.

By the Court: What is the allegation in your indictment?

By Mr. Payne: The allegation is as I remember, the Texas Company as consignor and the Texas Company as consignee shipped from Kiefer to Port Arthur, that they were actually shipped by the Texas Company.

By the Court: Let's see what it states. We are losing lots of time, you ought to know what the necessary allegations in the indictment are. Just read it to him—read what the allegation is—just let me have it.

Q. That throughout the last mentioned period the Texas Company—(beginning at page 5 your Honor.)

By the Court: Go ahead.

Q. And under your contract you delivered it to the Texas Company in the cars at Kiefer, that correct? A. Yes, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not binding on this defendant and the contract that this witness had with the Texas Company being the best evidence of the contract.

By the Court: Well, I will strike out everything about the contract. I will let him prove this commodity was the kind and description that he delivered certain cars to the Texas Company.

By Mr. Payne: At Kiefer.

By the Court: Yes, at Kiefer.

Q. Mr. McCarroll, you stated that this casinghead gasoline was blended with naphtha, was it not?

The Court: How many cars of that kind?

A. In that length of time?

The Court: During that period.

A. I couldn't answer that just exactly. We delivered about forty-five to fifty a month.

The Court: Do you know that these cars were numbered, have you got any way to show him? You have alleged certain cars here.

Mr. Payne: I will connect that up to the cars, your Honor, when we get to the Texas Company; we have got the shipping orders and will show by the Texas Company that the contents of those cars were bought from Crosbie and Gillespie.

The Court: All right, go ahead. Let's get through. I am going to close this case on the 24th of April, you can count on that.

Q. Where did you get the naphtha with which you blended these shipments, that was delivered to the Texas Company at Kiefer?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, and not binding on this defendant.

The Court: Objection overruled and exception saved.

Mr. Diggs: We save our exceptions.

A. From the Texas Company at West Tulsa.

Q. Where? A. West Tulsa.

The Court: Now during that period did you deliver to the Texas Company any other commodity other than as described by you?

A. No, sir.

The Court: Go ahead.

Mr. Payne: That is all.

The Court: Take the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. McCarroll, do you know of your own knowledge whether any of these products you have mentioned was delivered to the Texas Company?

A. Delivered it in their tank cars on our siding.

Q. Did you see that done yourself?

A. Yes, sir.

Q. Did you deliver any cars to the Texas Company on your siding on January 25, 1918?

A. I have no record of it here.

Q. I asked if you know? A. No, I don't think so.

Q. Why, I didn't catch your answer?

A. On January 25th what?

Q. 1918? A. Well, I will say I think we did.

Q. Do you know whether you did or not?

A. No, I wouldn't say.

Q. Do you know whether you delivered any car or cars to the Texas Company on your side track on February 16th, 1918?

A. No, I couldn't answer that.

Q. Do you know whether you delivered any cars to the Texas Company on your sidetrack on April 1, 1918?

A. No, sir.

Q. Or April 27, 1918? A. No, sir, I can't answer it.

Q. Or March 16, 1918? Do you know, Mr. McCarroll, of your own knowledge, whether any of your products ever went into a car marked T. C. X. 4193? A. Yes, sir.

Q. You do, when did it go in?

A. Well, I can't give you that.

Mr. Payne: Speak up a little louder.

A. I say, I can't give you the date.

Q. What causes you to remember the initial and number

of that car after more than a year after January 25, 1918, what impresses the initials and number of the car on your mind?

A. Well, I know we have loaded the car.

Q. Can you give me the initial and number of any other car? A. I cannot do it here.

Q. That you loaded on January 25th, 1918?

A. I cannot here.

Q. Can you give me the initial and number of any other car that you shipped on February 16th, 1918? A. No, sir.

Q. Well the number, initial, the number of any car that you shipped on March 16th, 1918?

A. No, sir, I didn't ship any.

Q. That you put on the side track?

A. I load them, I don't put them on the side track.

Q. Any cars you loaded March 16, 1918? A. No, sir.

Q. Or any car you loaded on April 1st, 1918? A. No, sir.

Q. April the 27th, 1918? A. No, sir.

Q. Is it not a fact that the reason you say that you recollect that you shipped this car that you loaded car initial T. C. X. No. 4193 on January 25th, 1918, is because I mentioned it, called these initials and number from this paper?

A. State that question again.

Q. Is not the sole basis of your statement that you remember that you loaded with your product car T. C. X. 4193 on your side track on January 25, 1918, is because I read those initials and numbers from this instrument?

The Court: What is your answer to that?

A. I cannot understand the question.

The Court: He asked you a while back a certain car, 4193?

A. Did he ask me the date?

The Court: No, not the date.

A. Well, I loaded the car.

The Court: He asked you if you didn't remember the number because he gave it to you.

A. Why he can read lots of numbers, I can answer it, but I have no record of it, I don't have to see the record.

The Court: Did you ever compare these numbers in these indictments?

A. I have never seen them.

The Court: Go ahead.

Q. Isn't it a fact, all you know, Mr. McCarroll, about this is that you loaded certain cars with your product for the

Texas Company on your sidetrack and you have no independent recollection of any particular date or any particular car number or initial?

A. No, I have not.

Mr. Diggs: That is all.

*Redirect Examination by Mr. Payne.*

Q. Mr. McCarroll, did the Texas Company furnish you with the cars in which you loaded your blended compression gasoline? A. Yes, sir.

Q. State whether the initial on those cars T. C. X. were they the private cars of the Texas Company? A. Private.

Q. Yes? A. Yes, sir.

Q. They were Texas Company's own tank cars so that when he read to you T. C. X. you know that that was a Texas Company car, is that correct? A. Yes.

Q. And did you load anything during the period that I have mentioned in the cars of the Texas Company except the blended compression gasoline that you sold to the Texas Company? A. No, sir.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, not binding on this defendant, leading, calling for a conclusion of the witness.

By the Court: I asked him myself. Why do you want to go over it?

By Mr. Payne: I wanted to show that everything he loaded during that period to the Texas Company would necessarily include it.

By the Court: That has already been asked. I asked the question myself if he loaded anything other than this commodity he described for the Texas Company. Now if that don't include it I would like to know what does?

By Mr. Payne: It certainly includes it your Honor, that is all.

(Witness dismissed.)

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Thereupon, E. J. SHIELDS, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Shields? A. E. J. Shields.

Q. Where do you live? A. Tulsa, 1707 Rockford.

Q. At the present time where are you employed?

A. At the present time I am not employed.

Q. Where were you last employed?

A. By the Constantine Refinery at Duvall, Oklahoma.

Q. Were you at one time with the Texas Company?

A. I was.

Q. Between what dates.

A. August, 1915, and August, 1918.

Q. Where were you stationed while you were employed by the Texas Company? A. West Tulsa Refinery.

Q. Tell me which are those—what those papers are, whether they are in your handwriting,—tell me please which of those papers are in your handwriting?

A. The shipping order and bills of ladings covering shipments of—two of them.

By Mr. Payne: Mark these Government's Exhibits 24 and 25.

Q. I show you two papers marked Government's Exhibits 24 and 25 and will ask you if you identify these documents as made out by you?

A. They were made out according to my instructions.

Q. Under your supervision?

A. Yes, sir. I could not say I made them out personally.

Q. State what the papers are please sir.

A. They cover shipments—

By Mr. Diggs: We object incompetent, irrelevant and immaterial and not the best evidence.

By the Court: I overrule the objection.

By Mr. Diggs: I except.

By the Court: State what they are but not the contents.

A. Shipping orders or bills of lading covering movement of cars from Kiefer, Oklahoma, to Port Arthur, Texas.

By the Court: They are the best evidence as to what they are.

By Mr. Payne: I offer these in evidence.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, no connection of the defendant being shown this being transaction with different parties with whom the *plaintiff* has not shown to have any connection and undertaking to bind it by acts of third parties.

By the Court: The objection is overruled.

The Court: Let the record show they are read.

Q. Referring to Exhibits 24 and 25, do you know that the cars enumerated in these shipping orders or bills of lading

were shipped by the Texas Company at Kiefer, Oklahoma, consigned to the Texas Company at Port Arthur, Texas?

A. I do know that the cars did move from Kiefer to Port Arthur, Texas.

Q. Do you know that these particular cars moved?

A. Well, I cannot remember that those exact cars did move.

The Court: In what connection was he employed at that time?

A. By the Texas Company.

The Court: Now do you know that they received these cars covered by these shipping orders?

A. I could not swear to it. Because I have not seen the record for some time.

Q. You said you were located at West Tulsa?

A. Yes, sir.

Q. Whereas these shipping orders purport to cover shipments from Kiefer? A. Yes, sir.

Q. How did that happen, Mr. Shields, that you could issue shipping orders at West Tulsa for shipments moving southbound from Kiefer?

A. We had at the time I was employed by the Texas Company, we had a contract with the Crosbie and Gillespie plant to take their output of casinghead gasoline, and at the time that these people would have these cars ready for shipment we would send our inspectors to the Crosbie and Gillespie plant to inspect the cars and if O. K. they would be shipped to Port Arthur. The bills of lading would be made out at West Tulsa and the inspector would take them with him and if the cars were O. K. he had them signed by the agent at Kiefer or Glennpool and shipped to Port Arthur there. We had no office at Kiefer at that time.

Q. Do you know that during the period from January 1, 1918, to June 30, 1918, that the Texas Company bought from Crosbie and Gillespie at Kiefer all of the output from their plant at Kiefer? A. I do.

Mr. Diggs: To which we object as being incompetent irrelevant and immaterial, and a transaction between third parties with whom this defendant is not connected or identified.

The Court: That is admitted only for the identification of these cars.

Mr. Payne: That is all.

Mr. Diggs: That is all.

(Witness excused.)

The Court: I will let you recall Mr. McCarroll. I will let you ask that question. I was under the impression that the evidence showed. But I will let you ask the question if all the cars loaded, whether or not it was the product blended with the naphtha. You may recall him and ask him that.

Whereupon CHARLES McCARROLL was recalled for further direct examination by the Government:

Mr. Payne: I did not catch the significance of your Honor's statement.

The Court: I remember the question I asked him, if all the product described made by that plant was turned over to the Texas Company and he said yes, but he described the product, casinghead gas extracted by compression and he described the blended article, so there might be some confusion, so now you can repeat the question that I did not permit you to ask him.

*Examination by Mr. Payne.*

Q. Are you the same Charles McCarroll who testified a few moments ago? A. Yes, sir.

Q. Did you receive from the Texas Company at Kiefer cars of naphtha shipped to Kiefer from the Texas Company at West Tulsa? A. Yes, sir.

Q. And what did you do with that naphtha?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: Objection is overruled.

Mr. Diggs: I except.

A. I used it to blend with.

Q. In what proportion did you blend the casinghead gasoline?

A. About a third, used about one-third naphtha, different—

Q. Do you know what the specifications for the product you sold to the Texas Company were?

A. I cannot answer it.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: He says he don't know. Now you testified as to loading cars for the Texas Company. Now was all that—state whether or not these cars that were loaded, were they all loaded with the blended commodity?

A. Yes, sir.

Q. Do you mean by that—

A. It was shipped under two different gravities, six months during the year they required a certain gravity.

The Court: Was it all blended?

A. All blended.

The Court: Blended with the naphtha and the commodity that was extracted by compression from the casinghead gas?

A. Yes, sir.

(Witness excused.)

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By the Court: Call your next witness.

Whereupon, W. K. HOLMES, called as a witness on behalf of the United States and being first duly sworn and examined testified as follows:

*Direct Examination of Mr. Holmes by Mr. Payne.*

Q. State your name please? A. W. K. Holmes.

Q. What is your position Mr. Holmes?

A. Superintendent of the Texas Company's Refinery at West Tulsa.

Q. How long have you been Superintendent of the Texas Company's Refinery at West Tulsa? A. Nearly five years.

Q. Mr. Holmes did the Texas Company—strike that out—did the Texas Company purchase any casinghead gasoline from Crosby and Gillespie?

By the Court: That is immaterial about how they got it, did they get it, did they receive the product and did they ship it, did they consign it? Not any necessity about how they got it.

Q. Did your Company receive blended compression gasoline from Crosby and Gillespie at Kiefer, Oklahoma?

By Mr. Diggs: To which we object, incompetent, irrelevant, and immaterial.

By the Court: Now what do you call it.

By Mr. Payne: I wanted to check up the products, one by one and show that they were blended but I appear to limited to shipping the blended product so I called it blended compression gasoline.

By the Court: Now you are using for this purpose—attempting to lay the predicate. You proved by those

two witnesses what it was and how they made it, and they loaded it into Texas cars. Now you can take up and prove what they did with those cars.

By Mr. Payne: I want to show what kind of naphtha went into it.

By the Court: How does he know?

By Mr. Payne: He manufactured it.

By the Court: How does he see it—how does he know unless he inspected it?

By Mr. Payne: He has the specifications

By the Court: That would be long range swearing for him to sit at West Tulsa and swear the kind of stuff that was put in the cars.

By Mr. Payne: He wouldn't swear to it unless he knows your honor.

By the Court: Did you ever see any of it?

A. Yes, sir.

By the Court: Whereabouts?

A. At both places.

By the Court: After it was loaded?

A. Yes, sir.

By the Court: Well, you can go ahead.

Q. State the processes Mr. Holmes by which that naphtha was manufactured.

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and for the further reason that it is not shown that the material inquired about is the material that went into the cars named in the indictment.

By the Court: You will have to do that.

By Mr. Payne: That will be connected up but we must necessarily start with the material.

By the Court: You will have to do that now before I will permit that to go in.

Q. Did your Company have an agreement to take the output of the plant of Crosby and Gillespie at Kiefer?

A. Yes, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: I sustain the objection, to that. I sustained the objection to the other evidence where he talked about the agreement, and excluded it from the jury.

It is just what they did. You have proof by the people that manufacture it.

By Mr. Payne: Alright, your Honor.

Q. Did the Texas Company receive from the Crosby and Gillespie Company compression gasoline plant at Kiefer during the period from January 1st, 1918, to June 30th, 1918, the entire output of their plant at Kiefer?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: How could he know that, they turned all of it over to them.

By Mr. Payne: I asked him if he knew?

By the Court: Do you know as a matter of fact they turned all that output of that plant over to them?

A. Our contract calls for it.

By the Court: That might be a reason why you might believe it. Now they testified that they loaded these cars why can't you get the man that knows and received these cars that were shipped and then prove that they set those cars up there—

By Mr. Payne: It would just involve a lot of record.

By the Court: You are not going to get it in that way because it is not according to law. They object and I sustain the objection.

By Mr. Payne: All would necessarily include some.

By the Court: How does he know they got all.

By Mr. Payne: He says he does.

By the Court: No, he says he knows because that contract calls for—what—I might contract for all the mules a man got and get 50 is that evidence? Now if you could go and show there were only 50 mules in the lot and that you got 50 that would be proof but circumstantial evidence that he got all of them—

By Mr. Payne: Alright we will arrange to get the documents to show just what cars he received. The witness is excused for the present.

(Witness excused.)

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Whereupon JAMES BAXTER SAINT, called as a witness on behalf of the United States, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name Mr. Saint.

A. James Baxter Saint, J. B. Saint.

Q. What is your position Mr. Saint?

A. Chief clerk of the refining department of the Texas Oil Company at the Port Arthur works.

Q. How long have you held that position.

A. That position I have held about five years.

Q. A subpoena was served upon the Texas Company to produce certain documents. Have you those documents with you?

A. I think I have, yes, sir.

The Court: Haven't you already identified them and know what you want?

Mr. Payne: No, I have not.

The Court: Well, let him stand aside then.

Q. Have you got the freight bill covering T. C. X. 4193?

A. I have just got twenty-two cars, I will have to look and see.

The Court: Looks to me like you all could systematize this and get these witnesses and they understand what instruments they are going to testify about and bring them into the Court House and be ready.

Q. You were subpoenaed to bring in freight bills covering the following cars: T. C. X. 4589? A. T. C. X. 4589.

Q. 4589? A. Yes, sir.

Q. 4558? A. Yes, sir.

Q. 3104? A. 3104, yes, sir.

Q. 2777? A. Yes, sir.

Mr. Payne: If the Court please, may I be excused and substitute Mr. Gann?

The Court: Very well.

*Examination by Mr. Gann.*

Q. What was the last one? A. 2777.

Q. 2690? A. Yes, sir.

Q. 633? A. Yes, sir.

Q. 3112? A. 3112.

Q. 4193? A. Yes, sir.

Q. 4574? A. Yes, sir.

Q. 3012? A. Yes, sir.

Q. 2740? A. Yes, sir.

Q. 4428? A. Yes, sir.

Q. 2901? A. Yes, sir.

- Q. 3107? A. Yes, sir.  
Q. 1881? A. Yes, sir.  
Q. 3113? A. Yes, sir.  
Q. 2226? A. Yes, sir.  
Q. 3068? A. Yes, sir.  
Q. 3058? A. Yes, sir.  
Q. 4435? A. Yes, sir.  
Q. 4691? A. Yes, sir.

Q. And have you, Mr. Saint, produced under this subpoena the original freight bills covering collections of under-charges on these cars T. C. X. 3104?

- A. Undercharges, 3104? yes, sir.  
Q. 2690?

Mr. Diggs: If the Court please, I understand this is to identify papers and what he says about it don't go to the jury.

The Court: Yes.

- Q. No. 2777? A. 2690—Yes, 2777.  
Q. 633? A. Yes, sir.

By Mr. Gann: I ask to have the exhibits marked for identification.

By the Court: What are these?

A. These are the papers that cover the movement of these 22 cars from points of shipment to Port Arthur, Texas, payment of freight charges and disposition of contents of each car in the tank.

By the Court: Very well, are these 22 cars in the indictment?

By Mr. Gann: Yes, sir.

By the Court: By whom were these 22 cars consigned who was the consignor?

Q. State that to the Court? A. By different consignees.

By the Court: Offer them one at a time so he can state what it is.

Q. Take the first car? A. 4589.

Q. By whom was that car shipped?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and not the best evidence.

By the Court: What does that paper show, this is for information for the Court.

A. I don't know by whom that car was consigned, it shows there F. G. Company.

Q. Is it not T. G. Company? A. Yes, sir, it is indistinct railroad writing.

By the Court: What is that for?

A. Totem Gasoline Company.

By the Court: From where?

A. Jenks.

Q. To Port Arthur? A. Yes, sir.

By the Court: Very well introduce that.

By Mr. Gann: I wish for the reporter to mark this for identification.

A. Now you will find these records are not intact.

By the Court: Identify that as exhibit 26. Now *that* let them make their objection.

By Mr. Diggs: I object as being incompetent, irrelevant and immaterial, tends to prove no issue in the case and for the further reason the paper has not been properly identified and it shows on its face to be a mere memorandum collated from other instances.

By the Court: What was that paper?

A. That is simply a history of each car shipped and received to Port Arthur.

By the Court: I will not permit that to be introduced.

Q. Have you the freight bills for that car?

A. I have the duplicate freight bill of each car, received by the agent of the Texarkana and Fort Smith Railway.

The Court: Have you the original freight bills?

A. I have not the original, I have a duplicate.

The Court: Made at the same time?

A. Yes, sir, it is a duplicate original.

The Court: That is a duplicate original made by the same hand at the same time, that is a duplicate original you have got.

Q. Have you a paper covering car 4580, the duplicate original?

A. Yes, sir.

Q. The freight bill. I will ask to have it marked for identification.

(Instrument marked for identification Government Exhibit No. 27.)

Mr. Gann: I offer it in evidence.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, and for the further reason that the instrument does not appear to be signed by

any person authorized either by the Texarkana and Fort Smith Railway Company to so sign it, or by the Texas Company, having merely a rubber stamp endorsement and not shown to be authorized by any person.

The Court: All right, show it to him and ask him what it is.

Q. What is the paper that I show you marked Exhibit 27?

A. That is a receipt of the Texarkana and Fort Smith Railway Company, dated February 18th, 1918, for freight charges paid them on T. C. X. 4589.

Mr. Diggs: We object as incompetent, irrelevant and immaterial, the paper, if admissible, being the best evidence of its contents.

The Court: Well, your objection is overruled.

Mr. Diggs: We save our exception.

The Court: Give it to me. Now you say this is the carbon copy. I understand this is a carbon copy made with the original?

A. Yes, sir.

The Court: At the time the receipt was made?

A. Yes, sir.

Mr. Diggs: Objected to as incompetent, irrelevant and immaterial, unless the witness states that he saw it so made, or that it was made under his direction.

The Court: Well now I will get this.

A. Got it from the Texarkana-Fort Smith Railway.

Q. When did you get it?

A. I presume on the 18th of the month, as received by his stamp.

The Court: The day it was executed.

A. If you will let me explain—

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial.

A. We require an original and a duplicate original both of which are signed and received. The original is kept in our New York traffic department.

The Court: Never mind about that. What is that

A. W. L.?

A. That is simply the initials of A. W. Law, the clerk who entered this freight bill in the record.

The Court: Do you know his initials?

A. Yes, sir.

The Court: Do you know his handwriting?

A. Yes, sir.

The Court: Is that his handwriting?

A. Yes, sir, by A. W. Law.

The Court: Clerk in what department?

A. In the storehouse department under my supervision.

The Court: Were you in the employ of the—in what capacity were you working on the date when this was made?

A. My present capacity, chief clerk.

The Court: Of the Texas Company?

A. Yes, sir, at Port Arthur.

The Court: Do you know this freight was paid to the railroad company?

A. As evidenced by the receipt, yes, sir.

The Court: Well, do you know it independent of that?

A. Yes, sir, I have the cancelled voucher.

Q. Have you the cancelled vouchers with you?

A. Yes, sir.

The Court: Get that.

Q. Covering car 4589?

A. Yes, sir, and a great many others.

Q. Is that the original voucher? Yes, sir.

Q. Taken from the record of the Texas Company?

A. Yes, sir.

Q. In response to that subpoena? A. Yes, sir.

Mr. Gann: I ask that it be marked for identification Exhibit 28 and I now offer the same in evidence.

Mr. Diggs: I object to that as being irrelevant, incompetent and immaterial, and for the further reason that it does not show the same has ever been paid to them, nor does the same appear to have been made payable to the railroad company mentioned. The instrument on its face recites it is payable, when properly endorsed, and notes the endorsements appearing thereupon.

Q. I will ask you to state what the record is.

The Court: Let me see it first.

Mr. Diggs: The Court can tell what the record is.

Mr. Gann: Surely.

The Court: The way I understand this voucher,

B-73, draft drawn by the Texas Company in favor of the South Texas Commercial Bank of Houston on the First National Bank of Houston, with the, and that is called a voucher to take up these drafts here, draft No. 570, given to the Texarkana and Fort Smith Railroad company, by J. E.—who is that?

Mr. Gann: Draft given to J. E. Countryman, agent of the Texarkana and Fort Smith Railway.

The Court: Mr. Countryman draws the draft, or the draft is drawn—drawn by J. M. Selton, who is he?

A. Treasurer of the Fort Smith Railroad Company.

By the Court: That is for \$22,826.87, that is marked paid February 24, 1918, by the South Texas National Bank. Here is another one drawn in the same manner for \$9,193.10.

By Mr. Diggs: We object to the two drafts as being not within the issues in this indictment and not showing the payment of freight on any cars mentioned in the indictment and for the further reason there appeared to be no acceptance or endorsement by J. M. Salter thereon.

By the Court: Well the presumption is they paid him personally if there is no endorsement to anybody else.

By Mr. Diggs: And there is nothing to show the rubber stamp endorsement thereon were made by J. M. Salter or by his authority or by whom.

By the Court: What position do you hold with the Texas Company?

A. Chief clerk of the Refining department at Port Arthur, Texas.

By the Court: Go ahead.

Q. Take the next car?

By Mr. Gann: I offer this in evidence.

By Mr. Diggs: Has your Honor ruled on that?

By the Court: I want to ask him a question. Where do you say you got those papers?

A. All original vouchers from my office and all paid vouchers from the office at Houston, Texas.

By the Court: What do you mean by paid vouchers?

A. Files kept in the office by the Auditor at Houston, Texas.

By the Court: All of the paid vouchers?

A. Of all departments throughout the United States.

Q. This man has charge of all payments?

By the Court: Is that so?

A. Yes, sir.

By the Court: You know these payments were made? Do you know they have been paid?

A. Yes, sir.

By the Court: Very well they are admitted on that statement.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, and as to the custom of the Texas Company in keeping paid vouchers; not being binding on this defendant and nothing therein tending to show that the money was ever received by the railroad company mentioned nor was it in payment of any car mentioned in the indictment.

By the Court: Overruled.

By Mr. Diggs: Exception.

Q. Take the next car?

A. May I complete the deal on that car by explaining that the agent in billing this car assessed a rate of 33 cents—

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not the best evidence.

By the Court: Overruled.

By Mr. Diggs: Exception.

A. I simply offer that charge because it doesn't complete the record of the receipt of that car unless this is admitted covering an undercharge on that car which is part of that exhibit.

By Mr. Gann: I ask this be marked for identification.

A. This is part of the Voucher L-409; this voucher covers the payment of that.

Q. This identified this as an additional voucher?

A. Yes, sir.

By Mr. Gann: I ask to have it marked for identification.

By the Court: That was also covered by these drafts.

A. No, sir, that is covered by a separate draft, instead of paying this by draft it was paid direct to the agent and received on the back by the agent, the agent himself has received.

By Mr. Gann: I ask that be marked also.

By the Court: Do you know the agent's handwriting?

A. Only by his name, Judge, it being on papers that I think he signed. I wouldn't want to swear I know his handwriting.

By the Court: Have you seen it enough to know it?

A. I wouldn't want to say that I have, No.

By Mr. Gann: The fact that the freight charge is paid and this is merely an additional freight charge.

By the Court: I will not admit that receipt as to the additional freight charge.

Q. Take the next car, 4558? A. Yes, sir.

Q. You have the original duplicate?

A. I have the original duplicate of that shipment covered by the same voucher covering the first car B-73, and there is another one there.

Mr. Gann: I ask to have this identified as Exhibit 30 and offer the same in evidence.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not shown to be issued by the authority of the Texarkana-Fort Smith Railroad Company or signed by any person on its behalf, merely on its face shows to be an instrument, a copy of another instrument which copy is not signed and the rubber stamp appearing on the face thereof not shown to be made by the authority of the railroad company or any of its agents or employees.

The Court: Have you got the others—offer them together as one exhibit.

Mr. Diggs: The Court overruled my objection.

The Court: Yes, objection overruled.

Mr. Diggs: I except.

Mr. Gann: I offer exhibits offered in evidence—this exhibit is offered in connection with the draft for \$22,826.87, and draft for \$9,193.10.

Mr. Diggs: I object to the introduction of the said draft as being irrelevant, incompetent and immaterial, because it does not appear said draft has been paid or the amount thereof received by the Texarkana and Fort Smith Railroad Company or any person authorized by it.

The Court: The objection is overruled.

Mr. Diggs: I except.

Q. The freight charges were paid on that car, were they?

A. Yes, sir.

Q. Take the next car, 3104, have you the original duplicate paid freight bill covering car 3104? A. Yes, sir.

Q. And also the voucher covering that car?

A. Yes, sir.

Mr. Gann: I ask that the exhibits be identified.

(Which exhibits were marked for identification as Government Exhibits 31 and 32.)

The Court: Now why don't you wire and get the auditor of this company and get him here and you will get it in much quicker. If they start in on these technical objections I will keep you here three months, and adjourn this jury over. If you start in that I will do that and get it all in here.

Mr. Diggs: I object to the Court stating in the presence of the jury that they are technical objections, that we ought not to make.

The Court: I didn't say you ought not to make them. I say it will take up the time of this Court. Proceed.

Mr. Gann: I offer Government Exhibit 32 in evidence.

Mr. Diggs: I would suggest they identify all these and then offer them at once. It will save time.

The Court: No, just withdraw these and bring the agent of that railroad and the auditor of the Texas Company.

Mr. Gann: The government withdraws all the exhibits offered in connection with the testimony of the witness Saint.

The Witness: Judge, may I explain, you say wire for the auditor. Now the man that gets up the draft is Mr. Guy Carroll.

The Court: There is no question about the draft. Now the man they want is the man that knows these drafts have been paid, that he has audited the books and knows it has been paid.

A. I can state that has been paid.

The Court: How do you know it has been paid?

A. By the cancellation of the bank.

The Court: How do you know that is the bank's cancellation.

A. We have been doing business with them and that is their cancellation on all vouchers.

The Court: I will permit you to go ahead then.

Mr. Gann: Strike out the withdrawal of the exhibits please.

Q. Take the next car.

The Court: No, you prove by him what he says here is not in that record.

Q. Have the freight charges on 3104 been paid to the Agent of the Texarkana and Fort Smith Railroad Company by the Texas Company?

Mr. Diggs: To which we object, incompetent irrelevant and immaterial, and this witness showing that he is the regular auditor or bookkeeper of the Texas Company.

By the Court: Very well I will let him answer the question if he knows.

By Mr. Diggs: Exception.

Q. Do you know of your own knowledge that the freight charges have been paid? A. Yes, sir.

By Mr. Diggs: Repeat our objection to that.

Q. And they have been paid? A. Yes.

Q. Take the next car 2777? A. Car 2777.

Q. Have you the original duplicate freight bill and the voucher? A. Yes, sir.

By Mr. Gann: I would like to have these exhibits marked for identification.

Mr. Diggs: Mr. Saint did you see—

By the Court: I will not permit you to cross examine this witness until your time comes.

By Mr. Diggs: I now ask permission of the Court to examine this witness for the purpose of ascertaining whether this is a duplicate original made by the Texarkana and Fort Smith Railroad.

By the Court: I will permit you to do that when you come to cross examine. Proceed.

By Mr. Diggs: Exception. We object to Government's Exhibit No. 33 as being incompetent, irrelevant and immaterial, not shown to be made by any person in the employ of the Texarkana and Fort Smith Railroad Company; to be unsigned by any agent of said company or showing that the car mentioned therein was ever received by said company.

By the Court: That is covered by one of those drafts?

By Mr. Gann: Yes, sir.

By the Court: That is covered by one of those receipted drafts where you testified the freight was paid, that right?

A. Yes, sir.

By Mr. Diggs: You are offering this too as a part of them?

By Mr. Gann: All or a part of the vouchers, together the draft is made a part of it.

By Mr. Diggs: We object to that part of Plaintiff's Exhibit 34 appearing to be a bill or voucher to the Southwest Texas Commercial National Bank for the reason that the same is not endorsed and the J. H. Wilson, it looks like that is his name and he is not shown to be an officer of the Texas Company or is authorized to draw checks and it appears on its face to be for some department agent and not shown that it ever went through the hands of the bank nor was paid by them and I make the same objection to that part of exhibit 34 marked voucher D-522 on the same grounds. I object to that part of the Exhibit, Plaintiff's Exhibit No. 34 bearing the number 534 and purporting to be a draft drawn to the order J. N. Salter and signed by J. C. Countryman as the handwriting of J. C. Countryman has not been shown and it appears to be his signature by another person who is not shown to have any authority to sign his name to the draft nor is the said J. E. Countryman shown to be an officer of the Railroad Company or the said A. R. Bank by whose name its purports to be signed is an officer of the Company or has authority to sign the same and I make the same objection to that part of Plaintiff's Exhibit 34. No. 585 being a like draft signed by the same person and for the further reason there is nothing on the face of the said papers to show they have ever been paid except the rubber stamp purporting to contain the name of the Southwest Commercial Bank said stamp not shown to have been affixed by any officer of the bank or any employee having authority to fix the name thereto.

The Court: Where did you get this voucher?

A. I got it from our auditor at Houston, Texas, our department agent, he is our auditor, they are in his files in Houston.

The Court: Now this voucher here, do you know

how the South Texas National Bank, are you conversant with the way they handle vouchers and how they mark them paid?

A. I am conversant with how all banks handle them, and that is marked in the same way, in the usual way as handled by all organizations of that kind.

Mr. Diggs: We object and ask to have the answer of the witness excluded as being incompetent, irrelevant and immaterial, and tending to show a general custom to which the defendant is not connected, and not being responsive to the question.

The Court: Very well; objection is overruled.

Mr. Diggs: We save our exception.

The Court: Now tell this jury whether or not that draft has been paid.

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, because the witness is not shown to have sufficient knowledge.

The Court: Very well, ~~state~~ whether or not that draft has been paid.

Mr. Diggs: We save our exceptions.

A. I stated with all commercial assurance that that draft has been paid.

Mr. Diggs: We object and ask that the answer of the witness be stricken, as incompetent, irrelevant and immaterial, and in his answer he states that with all commercial assurance the draft has been paid.

The Court: Why do you say with commercial assurance it has been paid.

A. Because it bears evidence of having passed through the usual channels before it reaches the disbursing officer for the final files—

Mr. Diggs: We ask that the answer of the witness be excluded on the ground it is incompetent, irrelevant and immaterial, and a conclusion of the witness, the fact on which said conclusion is founded not being stated.

The Court: Now, I believe they are going to insist on these technical rules. I will require you to send and get those witnesses.

Mr. Gann: I suggest all these exhibits be withdrawn and we re-enter the proof.

The Court: Very well.

Mr. Gann: Mr. Reporter, strike from the record all the testimony about those exhibits.

The Court: Now I will give notice to the defense that you all had better be ready to toe the law.

Mr. Diggs: We object to the court making the statement in the presence of the jury to counsel for the defendant which implies that they are making objections not authorized by law, which objections the court has practically sustained.

The Court: It might be authorized by law but they might be technical objections that only delay this court and take up time. Now we will not discuss it.

Mr. Diggs: Give me an exception.

The Court: Gentlemen, you will not consider what the court says when he is dealing with the lawyers in this case. That is a matter the court will take care of and the jury will not consider it in any way whatever for the present.

Witness excused.

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And thereupon A. A. TOPPING, recalled for further direct examination by the Government, testified as follows:

*Direct Examination by Mr. Paine.*

Q. Are you the same Mr. Topping that previously testified? A. Yes, sir.

Q. Referring to the tariff naming the rate on gasoline from Kiefer to West Port Arthur in—strike that out—have you before you the original official copies of the tariffs filed with the Interstate Commerce Commission by the various railroads interested in this case, to-wit, the St. Louis-San Francisco Railroad Company, the Midland Valley Railroad Company, the Kansas City Southern Railroad Company, the Texarkana and Fort Smith Railroad Company, the Atchison, Topeka and Santa Fe Railroad Company, and the Gulf Colorado and Santa Fe Railroad Company? A. I have.

Q. Referring to the tariffs naming the rate on gasoline from Kiefer, Oklahoma, to West Port Arthur, Texas—

The Court: Now when was that tariff filed?

Q. In force December 2nd, 1916.

Mr. Swacker: I object because the tariffs themselves are the best evidence.

The Court: Produce them, introduce them here in the record.

Mr. Payne: May it please the court—

The Court: I will give you permission to withdraw them later on.

Q. Have you got the tariffs there?

A. Yes, sir.

Mr. Payne: Identify this as Government's Exhibit, the two are in one, identify it as one exhibit, 36.

Q. Mr. Topping, I show you two sheets or pamphlets marked Government's Exhibit 36, and will ask you if they are the original tariffs as filed with the Interstate Commerce Commission? A. They are.

The Court: When do they show they were filed, point out the file mark.

A. Original tariff filed June 12, 1914, there have been filed supplements from time to time in the tariff down to supplement 64.

Q. State the I. C. C. number of that tariff and the number of the supplement thereto?

A. This is F. A. Leland, agent, I. C. C. No. 1048, to which there have been filed sixty-four supplements.

By the Court: Does that supplement show the file mark on them?

A. They do, yes, sir.

By the Court: Does that tariff show the rate on gasoline from Kiefer, Oklahoma, to West Port Arthur, Texas.

A. It does.

Q. Does that rate apply over the St. Louis and San Francisco Railway Company?

By Mr. Swacker: I object, the tariff is the best evidence of what they show, or how they apply.

By the Court: He can point it out, he is an expert, your objection is overruled.

By Mr. Swacker: An exception.

By the Court: Go ahead.

Q. Does the Kansas City Southern Railway Company and Texarkana and Fort Smith?

By the Court: Wait a minute. Now point out the railroad designated by them.

Q. State the page number?

A. St. Louis and San Francisco Railway Company shown on page 5.

Q. Shown as what?

A. Showing as concurring in this tariff under powers of attorney, issued to Mr. Leland.

Q. Who is F. A. Leland?

A. F. A. Leland is agent for the southwestern carriers generally.

Q. Do you mean that he is agent for the railroads in the southwestern territory? A. I do, yes, sir.

Q. What do you mean generally speaking by southwestern territory?

A. That part of the country west of the Mississippi river and south of Arkansas. It includes generally speaking a part of Louisiana, all of Texas, all of Oklahoma, and a portion of the State of Arkansas.

By Mr. Swacker: I would like to object to the witness attempting to testify concerning an agency which is not shown to have been in writing or how effective.

By Mr. Payne: He is only testifying to what the tariff purports to show.

By the Court: I will only permit him to testify what the tariff shows.

By Mr. Swacker: I ask that his previous testimony be stricken out.

By the Court: If the tariff don't show that it will be stricken out. If it is not shown by that record. You all know how to turn to that and find that.

By Mr. Payne: I call the court's attention to the notice on here "Issued by F. A. Leland, Agent."

By the Court: Turn to it and read it.

Q. State how the first page reads as to the agency.

By the Court: Read that part of it for the benefit of the gentlemen that are objecting as well as the jury.

A. Issued by F. A. Leland, Agent, St. Louis, Missouri.

Q. Does the tariff show it was issued by F. A. Leland under a power of attorney from the St. Louis—

By the Court: Read what it says, you ought to know how to ask the question.

Q. Read what it says with reference to the power of attorney of the St. Louis and San Francisco Railroad?

A. On pages 4 to 6 inclusive it reads "participating carriers names of carriers. There is included—

By the Court: Well read under that sub-head.

A. "Atchison, Topeka and Santa Fe Railroad under power of attorney to F. A. Leland, F. X. 1-33, Gulf Colorado and

Santa Fe Railroad Company, Form F. X. 1-25. Midland Valley Railroad Company Form F. X. 1-18, St. Louis San Francisco Railroad Company Form F. X. 1-100. Texas and New Orleans Railroad Company Form F. X.—

Q. Never mind about that—

A. The Kansas City Southern Railroad Company F. X. 1 number 24; Texarkana and Fort Smith Railroad Company, F. X. No. 20; St. Louis and San Francisco and Texas Railroad Company F. X. 1 number 23.

By Mr. Swacker: I object, no such road as I recall described in the indictment.

By the Court: What is that?

A. I read St. Louis, San Francisco & Texas Railroad Company.

By Mr. Payne: Strike that out that is not involved in the indictment.

Q. Turn to the page in the tariff and state the page number and if it is in the supplement, state the page number of the supplement which shows the rate on gasoline from Kiefer to Port Arthur, to West Port Arthur?

By the Court: Read the item.

A. Item 25-46-A shown at page 10, Supplement No. 2, gasoline in tank cars, minimum weight as provided in item 298 of the southwestern lines, classification, exceptions and rules circular No. 1-F, F. A. Leland, I. C. C. No. 1026, are reissued from Kiefer, Oklahoma, to West Port Arthur, Texas, rate in cents per hundred pounds 33.

By the Court: Go ahead. Proceed with the witness.

[Q.] Referring to the items that names the rate on gasoline from Jenks to the same destination—

By the Court: Now did you ask him from Kiefer to West Port Arthur, and Port Arthur, was that your question before?

By Mr. Payne: Yes, sir.

By the Court: Are you sure of that.

By Mr. Payne: I amend my question accordingly.

By Mr. Swacker: Whatever the witness read the tariff shows I ask the question be disregarded.

By the Court: Read the tariff from Kiefer to Port Arthur and West Port Arthur.

A. May I ask what date.

By the Court: The tariff which from its filing mark and other identifications shows that it was on file with

the Interstate Commerce Commission on December 2, 1916.

By Mr. Swacker: I object to the witness testifying to his conclusions, what would constitute on file with the Commission.

By the Court: Well you can turn to the tariff that was on file with the Commission then.

By Mr. Swacker: I think it is irrelevant unless there is something to show it was in force at the time and it seems that he is now referring to another tariff. He has not shown participating carriers.

By the Court: Are you still in this same book you testified about as to participating carriers?

A. Yes, sir.

Q. Did you state the supplement number that the gasoline rates from Kiefer is shown at? A. Yes, sir.

Q. State the supplement number if it is in a supplement and the page of the supplement in which the gasoline rate from Jenks is shown to Port Arthur and West Port Arthur?

A. Supplement No. 3 at page 10, 1536-N.

Q. Go ahead read the item?

A. Oil, petroleum and its products including compound petroleum oils and greases listed under a head of petroleum and petroleum products and rated 5th class or lower in current western classification from following points in Oklahoma; Jenks to Port Arthur and West Port Arthur, rate 39 cents per on hundred pounds.

By Mr. Swacker: I object to that as irrelevant and immaterial, he has shown nothing about gasoline there.

Q. Did the item that you just read refer to another tariff or a list of articles on which that rate applies?

A. It did.

Q. Referring to the other tariff or classification whatever it is—but before doing that turn back to the title page of the tariff and state whether it is governed by the western classification? A. It is.

By Mr. Swacker: I object.

By the Court: State what the title page shows.

A. "Governed, except as otherwise provided herein by western classification No. 52 or reissues thereof."

Q. Now you may refer to the classification and read from the item which is referred to in the other tariff.

A. Western classification No. 54.

By the Court: Identify that tariff which you refer to have the stenographer to identify that Exhibit 37.

Q. Refer to that book—

By the Court: What book what exhibit?

Q. Pardon me, Government Exhibit 37 and read from the title page there? A. The western classification No. 54.

By Mr. Swacker: I object to that the tariff he read from before purported to be covered by the western classification No. 52 or the reissue thereof.

By the Court: What is he testifying to now the western classification No. 54?

A. This is a reissue.

By Mr. Swacker: I object to the witness testifying that is a reissue. That is a legal conclusion.

By the Court: Is that 52?

A. Yes, sir.

By the Court: Let him identify 52 as Exhibit 38.

By Mr. Payne: Also identify this as Government's Exhibit No. 39.

Q. Referring to Government's Exhibit No. 38 state what that title page shows it to be?

A. Western Classification No. 52 cancelling Western Classification No. 51 and supplements thereto. Western Classification No. 53 cancelling Western Classification No. 52. Western Classification No. 54 cancelling Western Classification No. 53.

Q. Now state what page you are going to read from.

A. At page 302, under the caption, "Petroleum, or Petroleum Products," is listed gasoline, it taking fifth class.

Q. Now take up the Drumright gasoline rate. Get your tariff and we will identify it.

A. Supplement 52 at page 17 of Government Exhibit 36, basis for rates to and from stations on the Atchison, Topeka and Santa Fe Railway to or from Drumright, to make rates to or from the following stations on the Atchison, Topeka and Santa Fe and the arbitrary specified below to all rates named in tariff, authorized to or from Cushing, Oklahoma, in connection with the Atchison, Topeka and Santa Fe Railway. Petroleum, oil and products, arbitrary in cents per one hundred pounds, one. At page 58 of the same supplement, oils, petroleum and all its products listed under heading of Petroleum and Petroleum Products, and rated fifth class in current western classification from the following points in Oklahoma; Cushing to Port Arthur and West Port Arthur, rate of thirty-nine cents per one hundred pounds will apply.

Mr. Swacker: Are these tariffs in evidence, if I understand correctly?

The Court: Yes, sir.

Q. Fix the date that they were in force by showing the previous tariffs to the subsequent tariffs.

Mr. Swacker: I object to the witness attempting to give his opinion. I have no objection to his reading from the tariff, but this conclusion is a wholly different thing.

The Court: You refer and show when the tariff was filed. Then show when any supplement was filed and then point out anything in that supplement that changes the rate, if there is anything in the supplement to change the rate, relative to gasoline.

A. Supplement No. 52, effective November 16, 1916.

The Court: Is that the first supplement that was filed after the tariff sheet was first filed that related to gasoline?

A. No, sir.

The Court: Go ahead, take this witness and guide him; let's get through with this.

Q. Refer to the tariff in force prior to the tariff that you referred to, read from the tariff shown by the previous tariff which it superseded and state the date of the tariff that you now have—refer to the previous tariff and state what the stamps on it shows in reference to the cancellation; then refer to the present tariff and state what the stamp on it shows with reference to cancellation.

Mr. Swacker: I object to the witness' conclusion as to what are previous and what are present tariffs.

The Court: He can state the facts, he can testify, he can refer to the tariff and say there is nothing in the sheet relative to gasoline, that is a fact.

Mr. Swacker: I am not objecting to any such testimony as that, I am objecting to his attempting to state his conclusion of what was a previous tariff and what was a present tariff.

Mr. Payne: It is not his conclusion, it is evidenced right on it, otherwise you could never tell.

The Court: You have got the tariff filed 1914?

A. Yes, sir.

The Court: Now would that tariff of 1914 cover the rate of the items in there covering the rate of gasoline from Kiefer and Drumright to Port Arthur?

A. Your honor, I. C. C. 1048 were filed with the commission—

The Court: As shown by the files?

A. Yes, sir, the filing date on the face of that date shows June 12, 1914, the face of the tariff also shows it was in effect on July 24th, 1914, Petroleum and Petroleum Products, in this tariff were in effect until the issuance—

The Court: You have read—you have read what they are, I believe you have read that.

Mr. Payne: Yes, sir.

The Court: Now then, turn to any supplement where there was any change made in there at all, any reference made to them.

Q. If there is any, if there was not you are permitted to state there was not.

The Court: I will permit him to testify, if it is a fact, that in none of the supplements is there any items relating to gasoline; he can testify to the fact, if that were a fact. Go ahead.

Q. In supplement 64, page 13, item 1536-R, petroleum oils and its products—

The Court: When was that supplement, what is the date of it? And endorsement on it?

A. It is filed on March 23, 1917.

The Court: Now, are there any supplements between then and when the original rate was filed that dealt with this?

A. The items which show the rates on gasoline and petroleum products were in practically every supplement in this tariff.

Q. As I understand, the question is whether there was any change in the rate.

My Payne: I might state for the benefit of the court, that when a supplement is issued, and then changing a rate or naming a rate, a later supplement, in a later supplement that first rate published in the first supplement is reissued.

Mr. Swacker: I object to that statement, it is inaccurate in the first place.

The Court: Now take the first supplement and then the next supplement, and if it is the same I will permit you to testify the items are the same.

A. I have gone through every one of those items from the time this tariff was issued to the close of it, and there has been no change made.

The Court: No change in the language?

A. No, sir, only they have added a station now and then.

Q. Station other than the three points of origin involved in this case? A. Precisely.

The Court: Go ahead and read what he asked you.

A. I am going to endeavor now to show where the rates on petroleum and petroleum products were cancelled on this tariff and go into another one.

The Court: Very well, read that. Now that is in the 1917 supplement?

Mr. Swacker: Will the witness kindly refer to the books by the exhibit numbers that have been marked on them, so we may know the reference?

A. Government's Exhibit No. 36, supplement 64.

Mr. Swacker: Of that exhibit or another exhibit?

A. Same exhibit, yes, sir.

A. At page 13, item 1536-R, Petroleum Oil and its products from points in Oklahoma to points in Texas, cancelled, see 136, page 23 of the same supplement, item 2546-E, gasoline in tank cars from Kiefer, Oklahoma, to Port Arthur and West Port Arthur, Texas, cancelled, see 136.

Mr. Swacker: Did you read the effective date of that?

A. Yes, I will read it. On the title page of the supplement 64 it reads. "Effective May 2, 1917." At page 7, "Explanation of characters," first column "Characters" 136. For rates, rules and regulations on petroleum and petroleum products from Oklahoma producing points, see Southwestern Lines' Tariff 79. F. A. Leland, I. C. C., No. 1186.

Q. Take up the rate from the three points I mention at the first date I mention and follow down to May 31, 1919.

A. We have now covered up to May 2nd, 1917, in I. C. C. No. 1048.

Q. Well take it on from that date?

By the Court: That is not his business to have those things attended to.

By Mr. Payne: I beg your pardon. Mark this Government Exhibit 40. I was going to state when the documents are voluminous the witness can state he made an examination—

By the Court: Go ahead.

A. Government's Exhibit 40 shows on its title page I. C. C. No. 1186, issued by F. A. Leland, Agent, St. Louis, Missouri, at page 3, participating carriers, names of carriers, Atchison,

Topeka & Santa Fe Railroad Company under power of attorney to F. A. Leland, Agent, No. F-1, No. 33, at page 34, Gulf, Colorado & Santa Fe Railroad F. X. 1 No. 39.

Q. Just a minute, I want to hand the witness a line as to the Gulf, Colorado & Santa Fe Railroad lines.

By the Court: Go ahead you have not got time to write that

A. Kansas City Southern Railroad F. X. 1, No. 24, The Texarkana and Fort Smith Railroad, F. X. 1, No. 20, The St. Louis and San Francisco Railroad F. X. 1, No. 137. St. Louis and San Francisco of Texas.

By the Court: No, cut that out, Midland Valley next.

A. Midland Valley Railroad, F. X. 1, No. 18. At page 78 item 425 Miscellaneous Rates, commodities, gasoline in tank cars from Kiefer, Oklahoma, to Port Arthur and West Port Arthur, Texas, rate in cents per hundred pounds 33. Page 10, Oklahoma, producing point, Jenks, group location, A. Drumright, group location, Jennings, rate plus, one cents per one hundred pounds. Page 10 of group A.

By Mr. Swacker: Is there any limitation on that Jennings routing.

A. No, sir, nothing about routing?

By Mr. Swacker: Limited to the Missouri, Kansas & Texas Railroad.

By Mr. Payne: I object he cannot state a conclusion for you any more than for me.

By the Court: Go ahead.

A. Page 42 petroleum and its products as described in item No. 5, or reissues from group A to Port Arthur, Texas, rates in cents per one hundred pounds 39, page 15, item 5 where reference to this item the rates apply on petroleum oil and its products listed under head of petroleum and petroleum products rated fifth class or lower in current western classification. That is Government's No. 37, your honor, Government's Exhibit No. 37, No. 41 on its title page reads I. C. C. No. 1219, cancels I. C. C. 1186, issued by F. A. Leland—

By Mr. Payne: Just a moment I offer in evidence—

By the Court: That is already identified. All these sheets marked as exhibits are in evidence, let the record there show that.

A. Issued by F. A. Leland, agent, St. Louis, Missouri. At page 3—

Q. Are you stating the dates shown, the date indicated by the tariff as the effective date?

A. I don't recall whether I stated the effective date on I. C. C. 1186. May I state I. C. C. 1186, was effective May 2, 1917?

Q. State what the tariff shows as the effective date.

A. On the title page I. C. C. 1186 the effective date rates effective May 2, 1917, the title page of Government's Exhibit No. 41 shows the effective—

By the Court: Reads—

A. Reads—effective April 22, 1917.

By Mr. Swacker: I desire to make an objection to so much of the preceding tariffs as are offered in evidence subsequent to December 28th, 1917, as being irrelevant it being a matter of judicial knowledge that participating carriers heretofore shown as being carriers therein, ceased to be carriers on that date, by the taking of the railroads over by the President of the United States on that date, it not being shown that the director general of railroads filed as required by law and the rules and regulations of the Interstate Commerce Commission an adoption of the existing tariffs on that date.

By Mr. Payne: The indictment alleges count 86 which happens to be one of the counts that covers the period during the government control that prior to December 28, 1917, the railroad companies named here were common carriers and were engaged in interstate commerce and were subject to the acts regulating commerce subject to the statutes and that on December 28th, 1917, the United States of America, the President of the United States of America, did by his proclamation, dated December 26th, 1917, assume control of a certain system of railroad transportation, including the railroad route and lines of the three common carriers aforesaid and—

By the Court: Now if he makes a point there is no evidence here of these tariffs that the director general ever concurred in them for the purpose—

By Mr. Payne: The indictment alleges that throughout the period of time alleged in this count that the three common carriers mentioned under the federal control as previously described had printed and had filed with the Interstate Commerce Commission their rates and schedules.

Mr. Payne: Now I know as a matter of fact the Director General did later make himself a party to all such tariffs, to all tariffs.

Mr. Swacker: I object to these statements, there is a proper mode of proving this.

The Court: That is all right, he is permitted to state that for the benefit of the court. Very well, I will permit you to get certified copies of that and file them later. You can telegraph to Washington and get them later.

Mr. Payne: These tariffs show the Director General of the United States has issued them and published them.

The Court: Turn to it then.

Mr. Swacker: My objection was that the tariff preceding that, as to so much of it as admitted in evidence as purporting to show the rates governing the Director General after December 28, 1917. The tariff the witness is looking at now, that he read an excerpt from, as indicated, had cancelled that preceding tariff.

The Court: What is the date that went into effect?

A. I think Mr. Swacker refers to 1186, I. C. C. number, which remains in force.

Mr. Swacker: Don't state it remains in force, state what it says, on its face only.

A. Government's Exhibit No. 40 reads on its face "Effective May 2, 1917."

The Court: Now, what is your objection as to that?

Mr. Swacker: That so much of that as is purported to be evidence of the rate after December 28, 1917, shows no adoption by the Director General, or participation or concurrence by him in the manner and form required by the Act to regulate commerce and the regulations of the Commission thereunder.

The Court: They show for themselves.

Mr. Swacker: Yes, sir.

The Court: That is for you to show the jury.

Mr. Swacker: Very well. I just objected to the relevancy.

The Court: Whatever they show they show for themselves. They are there; this for the benefit of bringing the pertinent parts directly to the jury. That is what that is in here for. Go ahead.

Mr. Swacker: May we have an exception, or does the court exclude the evidence as to the consideration of that tariff?

The Court: These tariffs are in here; they show when they are filed and what is on them. They are in evi-

dence and if they were not effective at that time it shows for itself and I will permit you all to show that by evidence that that is a fact.

Mr. Payne: I might state for the benefit of the court, if he will permit me, that there was a short time—

The Court: I don't care anything about that, the evidence shows that. Go ahead.

A. Government's Exhibit No. 41 reads on its title page, "I. C. C. 1219, Cancels I. C. C. 1186, issued by F. A. Leland, Agent, St. Louis, Missouri." Page 3, participating carriers, names of carriers—

Mr. Payne: Will you raise your voice a little, I don't believe the jury gets what is going on; just speak up a little louder.

A. Names of Carriers. Atchison, Topeka and Santa Fe Railway Company, under Powers of Attorney to F. A. Leland, Agent, F. X. form No. 133. At page 4, Gulf, Colorado and Santa Fe Railway Company, F. X. 1-39. At page 7, St. Louis-San Francisco Railroad Company, F. X. 1-137.

A. (Continued) At page 5, Midland Valley Railroad Company, F. X. 1 No. 18; same page, Kansas City Southern Railroad Company, F. X. 1 No. 24; page 7, the Texarkana and Fort Smith Railroad Company, F. X. 1, No. 20.

Mr. Swacker: I object to his testifying to that exhibit on the ground of its being irrelevant, incompetent and immaterial, it not being shown an agency on behalf of the Director General, or any concurrence on his behalf.

Mr. Payne: There may be no evidence of it, but the course of the business will show that there was an adoption.

The Court: What does it show there as to the Director General?

A. Nothing in the original tariff, your honor.

The Court: Any supplement anywhere?

A. Yes, sir.

Q. Read it.

A. Supplement 4, title page, "The rates made effective by this schedule are initiated by the President of the United States, through the Director General, United States Railroad Administration, and applied to interstate traffic only. This schedule is published and filed on one day's notice with the Interstate Commerce Commission, under General Order No. 28 of the Director General, United States Railroad Administration, dated May 25, 1918, and amended June 12th, 1918."

Mr. Swacker: Read the effective date of that supplement.

The Court: Read the effective date.

A. Effective June 25, 1918.

Mr. Swacker: Now I ask, if your honor please, to have excluded from the evidence all of these tariffs purporting to cover, or name rates previous to the date last *intention* by the witness, as the date of their adoption by the Director General of the United States.

The Court: They show for themselves, they show when they are in effect. When I come to instruct the jury you call my attention to those matters and I will instruct the jury accordingly. Now is not the time.

Mr. Swacker: I am just objecting on the ground of irrelevancy and its immateriality.

The Court: Well, they are the rate sheets and you cannot exclude one part of this rate sheet without the other. That is a matter to be covered by instructions to the jury. At the proper time bring that to my attention and I will do that.

Mr. Swacker: May I have an exception to their going in evidence?

The Court: I don't pass on it now, I withhold the ruling of the court.

A. At page 79, item 660, gasoline in tank cars from Oklahoma points, Kiefer to Port Arthur, Texas, and West Port Arthur, Texas, rate in cents per one hundred pounds, thirty-three cents.

Mr. Swacker: May I ask what date the witness is reading?

The Court: What date you are reading now?

A. The title page reads, Effective April 27, 1918.

Mr. Swacker: I desire to object to his testifying as to contents of items from the tariff preceding the supplement adopting the tariff by the Director General as being incompetent, irrelevant and immaterial.

The Court: Now, does that show the Director General adopted that tariff?

A. June 25, 1918. I would say it shows the adoption on that date.

Mr. Payne: Well, that shows it was a form issued by the railroad and after that date the Director General adopted it.

The Court: I will permit that only to apply after the date the Director General filed his consent.

Q. Take up the next one after the Director General had given his consent. Now to save time and save objection, omit any tariff there that is not—until such time as the Director General became a party to the tariff.

A. May I state here, it will be impossible to read a rate from this tariff from that date, without referring back to the original tariff.

The Court: Well, that is all right.

Mr. Swacker: I would like to make objection to his referring to the original tariff, on the ground of the failure of any showing that the Director General adopted any tariff. There is a means by which it may be adopted, but there is no evidence that the Director General ever adopted those tariffs.

Mr. Payne: I think the court might take judicial notice of the fact that shortly after the railroads were taken over, and before all tariffs could be arranged, that the Director General did operate the railroads and did comply with the law which was still in force, which required him to collect those rates and observe those tariffs, he simply put himself in the place of the railroads.

By the Court: Well now where is the law for that? Where is the proclamation that does that?

By Mr. Payne: My best recollection is—

By the Court: We are not going on the basis of your recollection, look that up.

By Mr. Payne: I was going to suggest I could get the proclamation whatever it was.

Q. Well now give us your next—

By the Court: What was the supplement you found?

A. The first supplement, Supplement No. 5, No. 4 which made the general increase of 25 per cent with some exceptions, general increase of rates.

By the Court: Read the supplement—where it operates as an adoption—the tariff sheets are considered just like any other evidence.

A. I have read from the title page.

By the Court: Read it again.

A. Rates made effective by this schedule are initiated by the President of the United States through the Director General, United States Railroad Administration, and apply to interstate traffic only.

By the Court: Let's see that.

By Mr. Swacker: There is a manner and form provided by law for the adoption of the tariff. There is no evidence of that.

By the Court: I will get to that the rate is made effective by this schedule, or what schedule are you talking about?

A. This schedule here.

By the Court: Let's see what the schedule says. Does that schedule refer back to these other rates?

A. Yes, sir.

By the Court: Now read where it does that, are they enumerated here?

A. Yes, sir.

By the Court: Very well, I will overrule the objection.

By Mr. Swacker: I except.

Q. Take up the next, Mr. Topping.

A. At page 11, Oklahoma, producing point, Jenks, group location A.

By the Court: This is between December 28th, the time—

A. This is prior.

By the Court: You need not read as to that. You may state what that schedule shows I will cover that by an instruction to the jury. Now I am going to instruct the jury unless you show me something to the contrary that between December 28th and the time that that supplement became effective that there was no legal rate to make it any crime for violating it after December 28th and up to the time this supplement became effective.

By Mr. Payne: Unless we show you some authorities?

By the Court: Yes.

A. Shall I proceed?

By the Court: Yes.

A. At page 10, Oklahoma producing points, Drumright—

Q. Pardon me, did you state the exhibit that you were reading from? A. Exhibit 41.

Q. Go ahead, answer?

A. Group location, Cushing, rate plus one cent per one

hundred pounds. At page 42 petroleum and its products as described in Item No. 5 on reissue to Texas Points from Group A. rates in cents per one hundred pounds Port Arthur, 39 cents. The same heading on page 43 to West Port Arthur, 39 cents.

By Mr. Swacker: It appears that all the items read by the witness from this Exhibit are read from that portion of the exhibit preceding the date of the supplement filed by the Director General.

A. Yes, sir.

By Mr. Swacker: May we have an objection as incompetent, irrelevant and immaterial.

By the Court: Very well.

By Mr. Swacker: Exception.

A. At page 17 item 5 where reference is made to this item the rates apply on petroleum oil and its products listed under the head of petroleum and petroleum products and rated fifth class current western classification.

By Mr. Swacker: May we make the same objection to that also.

By the Court: Yes, you may have your exception.

By Mr. Payne: I offer Government's Exhibit 42 in evidence your Honor after he identifies it.

By the Court: It may be considered in.

By Mr. Swacker: We object to the witness reading anything from Government's Exhibit 42 as the application sought to be given it comes from the body of the exhibit last read from which was received subject to objection.

By the Court: Very well.

By Mr. Swacker: Exception.

A. Exhibit No. 42 on the title page reads western classification No. 55 at page 339 under the classification under the caption "petroleum or petroleum products," it reads "Gasoline." Exhibit No. 41, supplement 4, page 2,—

By Mr. Swacker: Will the witness read the effective dates shown on these because we have no way of knowing.

A. This was read—I omitted the first page to save time. Effective June 25th.

By Mr. Swacker: Have you read that one before?

A. Yes, sir.

By Mr. Payne: Don't repeat anything on the suggestion of the other side. You go ahead.

By the Court: Oh yes.

By Mr. Payne: The Court will give you your instruction.

A. Supplement No. 4 this covers Exhibit 41 reading on its title page effective June 25th, 1918. At page 7 the rates are raised in tariff supplement hereby numbered the increase by this supplement applying to the entire rate listed below whether such rates are published as statistic, orders are made up of use of differentials or arbitrary—I. C. C. No. 1219. At page 2 application of rates effective June 25th, 1918, all rates then in effect named in tariff are enumerated herein and in prior supplements thereto as indicated to each of which tariffs this is a special supplement or increasing those rates shown in column D table of rates on page 46 inclusive hereof except as otherwise provided and the exception to the table of rates on page 7 hereof.

By the Court: How much do you lack of being through?

A. Oh, over a half hour.

By Mr. Swacker: I would like to object to the admission of the last matter mentioned by the witness as being incompetent, irrelevant and immaterial and not connected up with the other tariff nor any adoption of the other tariffs by the Director General having been shown.

By the Court: Overruled and exception noted. The witness will be excused until nine o'clock in the morning. The jury will be permitted to go now under the usual instructions heretofore given them and until nine o'clock in the morning. Remember the hour, nine o'clock in the morning. Court will now take a recess until nine o'clock in the morning.

(Whereupon Court adjourned until nine o'clock tomorrow morning.)

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#### MORNING SESSION.

April 15th, 1920.

(Whereupon, Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the Jury having been called by the Clerk and all found to be

present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had and the following evidence offered and introduced, to-wit:)

By Mr. Diggs: If the Court please if you will give me three or four minutes I think we can save three or four days' time in this case. If the court please as to the character of evidence the shipments of the Texas Company sought to be introduced yesterday under certain conditions we think that evidence is immaterial but as we understand the rule in order to be able to move to exclude that evidence after the close of the Government's case we must save exceptions to it as we go along or make an objection to it reserving the right to strike at the conclusion of the Government's case unless the other facts have been shown to make it relevant and material so to cover that feature of the case I have prepared an admission that we are willing to make with respect to count 36 and 81 of the indictment. (Reading): It is admitted by the defendant that the Texas Company shipped to itself at Port Arthur, Texas, over the routes of the Midland Valley Railroad, the Kansas City Southern, and Texarkana & Fort Smith Railway upon the dates, in the cars, the quantities in each such counts alleged, casinghead gasoline blended about one-third naphtha described in the shipping orders as gasoline and paid the charges for the transportation thereof from Kiefer, and Jenks, Oklahoma, computed at the rates respectively, 33 cents and 39 cents per each hundred pounds and that the commodity shipped from Kiefer was produced by Crosby and Gillespie Company and that from Jenks by the Totem Gasoline Company, this admission is made subject, however, to the right to move to strike it and have it stricken from the record in the event the Government does not prove by additional evidence facts sufficient to make this evidence relevant and material.

The Court: What do you say about that?

Mr. Chambers: I don't know what he means by that last proposition.

The Court: They admit that for the purpose of the record subject to their right to strike it out on the ground of relevancy and incompetency.

Mr. Diggs: After the Government closes its case, if the Court thinks it is relevant and material, it stands; if the Court doesn't think so, it is stricken. And I want

to add to the record that the admission is made for the purpose of this trial only.

The Court: Yes.

Mr. Payne: There could certainly be no objection to that. If there is any further evidence, we will have to put it in, in addition to the admission. May it please the Court, in reference to the rates, the witness Topping has so far covered only the rate on gasoline from the three points of origin in question to Port Arthur from the beginning of the period mentioned in the indictment up to June, 1918. He must go yet over a long period as to the gasoline rate, and then we propose to show the rate in effect on liquefied petroleum gas and naphtha. For that reason that beginning, or effective September 1, 1918, as we contend, the classification contained a rule that a blend of casinghead gasoline with naphtha must be described and shipped as gasoline, casinghead gasoline or casing-head naphtha.

The Court: When was that?

Mr. Payne: Now, the tariffs don't specifically mention naphtha—casinghead naphtha or casinghead gasoline; but we propose to show that in addition to the rate on gasoline, that there is a rate on liquefied petroleum gas which is casinghead gasoline when the vapor tension is above ten pounds, and that the rate on the mixture, rate on naphtha or gasoline or liquefied petroleum gas are all the same. That is, the same rate applies to all. In other words, whether it is described as gasoline, casinghead gasoline or casinghead naphtha.

The Court: You mean the same rate applies to all.

Mr. Payne: Yes, sir, I believe to all. Now, I propose this morning to re-offer the rate certificate, subject to Mr. Swacker's objection that the Interstate Commerce Commission can not certify how long the rates were in force, and then put in the rest of the tariffs without having them read from and then the construction of the tariff will be up to the Court, and the Court can call expert witnesses on either side to—in other words, there can be no dispute between counsel as to what the tariffs show.

Mr. Swacker: I think the proper way to determine the rate is by reference to the tariff and the Court instruct the jury, as a matter of law, what the rates are after the Court has read the tariff. The Court might advise himself by consultation with Mr. Topping, or anybody else that he wants to, but I want to correct the statement made by

Mr. Payne concerning the description of casinghead naphtha, casinghead gasoline and gasoline, which he says became effective in the classification September 1st, 1918, that is merely the rule governing the description required to be shown in the interest of safety, one of the safe transportation rules of the classification so described, and then the description of liquefied petroleum gas in those rules is limited to casinghead gas, condensed with a vapor tension exceeding ten pounds per square inch—

Mr. Payne: That is a question of argument. We contend that they are. He contends that they are not.

The Court: I will permit you to introduce the records and then I will hear argument on that.

Mr. Swacker: And there is one other part I want to reserve an objection to the consideration of rates now on liquefied petroleum gas or naphtha or other petroleum products; for the reason the indictment charges us with shipping gasoline and alleges rates on gasoline, and if it were a fact it might be shown there was another rate applicable, that would be absolutely inadmissible in this case.

Mr. Payne: All we can show is the rate on the commodity that was shipped.

Mr. Swacker: We dispute there was any other rate applicable.

Mr. Payne: That is a matter of argument.

The Court: What is the allegation in the indictment?

Mr. Payne: The allegation is that the defendant shipped gasoline.

Mr. Swacker: And that the rate was on gasoline, that is all I am making this objection; under the rule it would be the same as if they charged us with stealing a white horse and wanted to now prove we stole a black horse and get a conviction on that.

Mr. Payne: I know, but if we allege the gasoline rate on a certain product, gasoline product was 33 cents.

The Court: Turn to the terms of the allegations of the indictment.

Mr. Swacker: They are the "rates and charges for the transportation of certain products, to-wit, gasoline, in tank cars," and this tariff shows said rate to be 33 cents for each 100 pounds thereof. They charge that we shipped on certain dates while this tariff was in force and effect, to-wit, certain products, 8,049 gallons of gasoline. We contend that was undefined naphtha. We will concede

on that point, as a matter of law, it has been held under the Elkins Act you might require in a bill of particulars—that it is not necessary to be alleged, but it might be alleged under the Elkins Act, on a charge that we shipped gasoline, the rate on gasoline being a certain rate, and got a concession on it, and prove that you did it by some device. When it was something else, shipped, you certainly could not deviate from the fact you shipped something else, because the rate might be on gasoline and on the other product the same thing, and thereby prove it. Therefore, we object to any evidence relating to rates on anything other than gasoline and unrefined naphtha.

By Mr. Payne: The position of the Government is that these shipments were gasoline as alleged in the indictment and that the rate on gasoline applies. Now we have the rule of classification, the rule 44 of the classification which says that casinghead gasoline blended with naphtha must be shipped as gasoline, casinghead gasoline or casinghead naphtha. Now our contention is that it is gasoline. That those three things however, are by the rule itself different ways of describing the same thing in that—

By the Court: Very well I will let you put in in. It seems to me like it ought to be put in the record that this is for the benefit of the Court because if either side wants to go up it would be in the record.

By Mr. Swacker: I don't know whether your Honor understands that this rule 44 Mr. Payne has just referred to is the transportation rule.

By the Court: Who is it made by?

By Mr. Swacker: By the Interstate Commerce Commission upon the suggestion of the bureau of explosives.

By the Court: Well now wouldn't that be permissible on the question of intent, that goes to the good faith of the parties making the shipment.

By Mr. Swacker: Highly so, we will contend strongly the point that we complied with it and there was no deception but I am arguing there could be no proper evidence of the rate on the other products on the theory which the Government seem to be taking—that is if it is not gasoline it is liquefied gas and if it is not liquefied petroleum gas it is liquefied petroleum gas and the products produced, and if it is not that it is naphtha.

By Mr. Payne: No we have not contended that at all.

By Mr. Swacker: Just a moment.

By Mr. Payne: We have not contended that.

By Mr. Swacker: Just a moment.

By the Court: Let me ask you a question. Now what is the object, what would be the relevancy of showing a rate on liquefied naphtha.

By Mr. Payne: It is a matter of evidence in the case and a circumstance.

By the Court: Where would be the relevancy and the circumstance?

By Mr. Payne: To rebut the reasonableness of their contentions our evidence would show when it became liquefied as a vapor tension of ten pounds at most shipped as liquefied petroleum gas which takes the rate the same as gasoline and if those vapor tensions weathered down to ten or below which it might do in a day's time then according to their contention the same car might be shipped for one half of what it would the day before.

By the Court: That may become competent later on.

By Mr. Payne: We want to put in the rate.

By the Court: I will let you introduce these records and if it become necessary I will let you bring in the witness. That might become competent but it is not now, I would not permit it now, but I am inclined to think it might under certain circumstances become competent later on.

By Mr. Swacker: Your Honor understands there is no pretense we have shipped anything over ten pounds and the tariff will be in evidence and your Honor will instruct the jury as to what the rates are.

By the Court: You ought to get the expert here so I can—

By Mr. Payne: Yes, sir, sir, in order to keep the record straight I wish to re-offer Government's Exhibits 16, 17, 18, 19 and 20.

By the Court: They are admitted in so far as they set out the rates.

By Mr. Swacker: In so far only as each of them purport to be an excerpt of the tariff.

By the Court: And the recital there shown.

By Mr. Payne: Everything in these certificates except the title sheet are simply copies from the tariff.

By Mr. Swacker: No I beg your pardon there is on each sheet an excerpt and then there is a preface and the

preface is what we object to and I understand under the Court's ruling that is a conclusion.

Mr. Swacker: This part is the actual extract. This is a statement that it is an extract.

The Court: That is the extract.

Mr. Payne: I propose to put in the tariff schedules themselves.

The Court: I will admit the parts all except this and then introduce all the tariffs.

Mr. Swacker: The certificate on its face, we also object to the last recital about when they were in force.

The Court: Yes, that will not be admitted.

Mr. Swacker: And the tariffs are to be regarded as in evidence.

The Court: All of these tariffs. They only apply to matters of relevancy.

Mr. Swacker: Those are to be determined by the court later.

The Court: They will be presented to the jury on direction of the Court.

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Whereupon A. A. TOPPING, the witness on the stand at adjournment yesterday afternoon, was called to the stand and examination resumed.

*Direct Examination Continued by Mr. Payne.*

Q. You are the same Mr. Topping that was on the stand yesterday in this case? A. Yes, sir.

(Whereupon Mr. Payne asked the Reporter to mark certain papers exhibits, and they were marked Exhibits 45, 46, 47, 48, 49, 50 and 51.)

Q. I show you Government's Exhibit 47, and ask you to identify it.

A. Government's Exhibit 47 is tariff issued by F. A. Leland, Agent, under I. C. C. No. 999.

Q. I show you Government's Exhibit 45 and ask you to identify that.

A. Government's Exhibit 45 is a schedule issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. No. 1137.

Q. Schedule or tariff?

A. That is not a tariff, it is exceptions and rules and regulations to the Western Classification.

Q. I show you Government's Exhibit number 46, and ask you to identify it.

A. That is a schedule issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. No. 1244.

Q. I show you Government's Exhibit number 48, and ask you to identify that.

A. Government's Exhibit number 48 is the Western Classification number 50.

Q. I show you Government's Exhibit number 49, and ask you to identify it.

A. 49 is the Western Classification number 51.

Q. I show you Government's Exhibit number 50, and ask you to identify that.

A. Number 50 is the Western Classification number 55.

Q. Government's Exhibit number 51, and ask you to identify that.

A. Exhibit number 51 is a tariff issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. number 889.

Q. I show you Government's Exhibit number 52, and ask you to identify that.

A. Number 52 is a tank guage book showing the classes of tank cars used in the transportation of liquid freight issued by E. B. Boyd, Agent, Chicago, under I. C. C. number A-722.

Q. Mr. Topping did you get that schedule from the official tariff files of the Interstate Commerce Commission?

A. It came from the files of the Interstate Commerce Commission, Washington, D. C.

By Mr. Payne: I am offering these.

By Mr. Swacker: Are you qualifying that answer as different from Mr. Payne's suggestion? He asked you if it came from the official tariff files and you answered that it came from the files.

A. Oh, the official files, we have nothing but the official files in Washington.

By Mr. Payne: That certificate will show the shell capacity of the tank cars.

By the Court: Introduce it and bring it up afterwards.

Q. Government's Exhibit No. 53—

A. Government's Exhibit No. 53 is also tank guage book, issued by E. B. Boyd, agent Chicago under I. C. C. A-785.

Q. Show you Government's Exhibit No. 54, identify that please?

A. Government's Exhibit 54 is tank guage book issued by E. B. Boyd, agent, Chicago, under I. C. C. A-826.

Q. Here is Exhibit of the Government, 55, identify that please?

A. That is a tank guage book issued by E. B. Boyd, agent, Chicago, under I. C. C. A-906.

By the Court: Mr. George Anderson, who was a witness yesterday, any objection to his being excused?

By Mr. Swacker: No, sir.

By Mr. Payne: Mark it Government's Exhibit No. 56.

Q. I show you exhibit 56 and ask you to identify that?

A. Government's Exhibit No. 56—tariff issued by F. A. Leland, agent, St. Louis, Missouri, under I. C. C. number 1253.

By Mr. Payne: That is all Mr. Topping. Your Honor, I would like to check these up and ask permission to recall Mr. Topping if necessary, later.

By the Court: Alright.

By Mr. Swacker: May I make a suggestion. It may be better to leave *these* marked for identification rather than considered in evidence so we can keep the record straight direct later on what is admissible so as to determine—

By the Court: I will show the records are introduced now but I will direct the jury's attention to part that I consider proper later.

By Mr. Payne: They are in evidence, then, all these exhibits that Mr. Topping testified to.

By the Court: Yes, sir.

*Cross Examination by Mr. Swacker.*

Q. Mr. Topping, will you look at Exhibit number 40, and find the item Drumright which you read from yesterday?

A. At page 9, yes, sir.

Q. Did you read all of the mater there relative to routing?

A. No, I read this, I read under group number, Jennings rate, plus one cent per one hundred pounds.

Q. Are there some notes there? A. Yes, sir.

Q. You didn't read those notes? A. No, sir.

Q. Will you read them?

A. Well, rates from Drumright, Fry, Oilton, Pameta—

Q. Read only so far as Drumright is concerned.

A. Rates from Drumright to apply via Cushing, Oklahoma and the A. T. & S. F. Railway only.

Q. Now, will you read the other notes, so far as it relates to routing.

A. Let's see. Note 7, I will read it. It doesn't apply to routing, I don't think it does. Note 7, basis shown herein for points making reference hereto will not apply in reference to the distance rate shown in item number 590 on re-issues.

Q. Now, will you look at the Jennings item referred to there, upon which the rate was based?

A. Now, for rates from Jennings, I find that Jennings is shown as being located on the A. T. & S. F., the M. K. & T., the St. L. S. F. in group location A.

Q. And do you find any limitation on routing on the rate from Jennings to be used in constructing this rate?

A. Yes, turning back to Drumright it states that the Jennings M. K. & T rate plus one cent.

Q. What are the exact words?

A. Jennings, M. K. & T. Railroad plus one cent per hundred pounds.

Q. Well, as a matter of tariff construction, not a matter of testimony, do you contend that you would construe that tariff via the A. T. & S. F.?

A. Most assuredly.

Q. That would apply via the Santa Fe? A. Oh, yes.

Q. Now, Jennings is routed via M. K. & T.?

A. It doesn't say that. This is the basis for making a rate from Drumright and whatever rates by the M. K. & T. you add one cent to make it applicable on the Atchison, Topeka and Santa Fe.

Q. That would be your way of construing it?

A. That is what the tariff says.

Q. Did you get out these tariffs from the files?

A. I did, personally.

Q. Are all those tariffs introduced in evidence necessary, in your judgment, in order to ascertain what the rates are involved in this case?

Mr. Payne: I object. Not proper cross examination! We have only put in the rate and what his judgment might be—

By the Court: I will let you make him your witness.

By Mr. Swacker: Alright.

Q. You say Mr. Topping is it necessary in your judgment as a tariff expert to use all these all these tariffs that have been introduced in order to ascertain the rates involved in this proceedings?

By Mr. Payne: I object as calling for a legal conclusion.

By Mr. Swacker: I am asking his opinion.

By the Court: I will see, I will let him answer and I will see.

A. Oh, what rates do you refer to?

Q. The rates covering the transportation of gasoline and unrefined naphtha between the period of December 2nd, 1916, and March 12th, 1919, between Keifer, Jenks, and Drumright, Oklahoma, and Port Arthur, or West Port Arthur, Texas?

By Mr. Payne: I object because this can have no possible relevancy to the case and I think he is going to try to show the shipper did not know what the rates were and he could not comply with them.

By the Court: You mean the shipper did not know what the rates were?

By Mr. Payne: Yes, sir. But the shippers are charged with the knowledge of the rates and of course the traffic manager would know—

By the Court: What is the purpose of this?

By Mr. Swacker: It is competent to show the quantity and material and labor and quantity of work a man would have to go through.

By the Court: I will sustain the objection at the present time, I can see that that might be permissible when the defense arose.

By Mr. Green: Note our exceptions.

By Mr. Swacker: We think it is admissible on the theory of showing absence of intent.

By the Court: I will permit you to recall him at the proper time.

By Mr. Swacker: I will limit myself then to the re-cross examination of the witness.

By the Court: Alright.

Q. Each of the places you have marked in those tariffs is a reference involved in this matter is it?

A. Not necessarily, most of them are. They are merely for help, that is all.

Q. Do you know if the Interstate Commerce Commission has issued and promulgated the rules and regulations governing the construction and filing of freight tariffs and classifications under the provisions of section 6 of the Interstate Commerce Act? A. I do, yes, sir.

Q. I hand pamphlet marked Tariff circular 18-A and ask you if that is the rules and regulations so issued by the commission? A. That is.

Q. And I will ask you to look at Supplement No. 4 and say

if that tariff circular together with that supplement are the rules and regulations in force since the date shown on them and still in force.

A. I know that 18-A is still in force. I would not say that supplement contains all the amendments. I have a complete copy with me. The circular is still in force, however.

Q. What is your best recollection of any supplement subsequent to supplement 4?

By Mr. Payne: I object just for the purpose of recording my objection to his proving things in a way he will not allow me to prove them.

By the Court: Yes, I sustain the objection.

By Mr. Payne: The best evidence is the certified copy from the Interstate Commerce Commission. I have no objection in the world to that going in evidence but you have put us to a lot of trouble to prove things in a legal way you try to prove them in a different way.

By Mr. Swacker: I am going to ask for an exception to a statement like that in the presence of the jury. We think we are entitled to preserve our right and save an exception to such comments.

By Mr. Payne: Your Honor, I will stipulate that is a tariff circular of the Commission, but he ought to prove it in a legal way and I object and ask that he prove it in a legal way.

By Mr. Swacker: Very well if he stipulates it I will offer it in evidence as Defendant's Exhibit No. 57.

By Mr. Payne: No, I didn't stipulate it, I said I would.

By Mr. Swacker: Well will you?

By Mr. Payne: I stipulate that that is a tariff circular issued by the Interstate Commerce Commission.

By Mr. Swacker: And that Supplement four is the last supplement?

By Mr. Payne: I do not know about that.

By Mr. Swacker: Will you have Mr. Topping look up his files and see if you have any objection to that?

Q. Mr. Topping, will you look at Supplement number 3, and read that rule 9-J?

Mr. Swacker: I don't know as we need to take up time, as that will be addressed in argument to the Court. Just read that for your own information, so I may ask you another question in reference to it.

A. I am.

Q. You are familiar with that rule, are you?

A. I am fairly so, yes. I wish I were more so. I have read it many times.

Q. Did you find in the files of the Commission any supplement, such as provided for by that rule filed by the Director General of Railroads of the United States adopting any of these tariffs?

The Court: Did you look for them?

A. Why, no your Honor, brought the supplements to these tariffs with me. Now the Director General—

Q. Just a minute. Did you bring all of the supplements to each of these tariffs?

A. With the exception of 1048. I brought the last supplement I. C. C. 1048, I don't recall what exhibit that is.

The Court: Why can't you find what is up there and stipulate?

Mr. Swacker: I don't think it exists.

The Court: Well, if it don't exist, you can find out and stipulate that.

Mr. Payne: I am willing to stipulate anything in the world that these tariffs show.

Q. Is there any such supplement as that provided by rule 9-J in so far as respect to these tariffs,—

Mr. Payne: I object, your Honor please, I think it is a matter of common knowledge. The Court will take judicial knowledge that the Director General took over the railroads and operated them, and he is trying to show for a period of three or four months, or five months, there was no fixed rate.

The Court: That is a question of law if they did not file anything else when they made the Proclamation and the Act of Congress that will become a question of law.

Mr. Swacker: What I am trying to do is to find out whether there is any such supplement as that,—

The Court: The facts, if they exist, that ought to be admitted.

Mr. Payne: He adopted those tariffs, I understand they have wired for the adoption, which will be here in a few days, and I now request, I make the request that in case the certificate which we wired for does not arrive on time, that we be allowed to put that in evidence before we have rested.

The Court: I will permit that. But I say, whatever

the facts are, they ought to be stipulated when you find out just exactly what was done, and then it becomes a question of law.

Mr. Swacker: Yes, but my contention is that this is the only lawful way to do it,—

The Court: That will be a question for the Court to pass on.

Mr. Swacker: But it is necessary for me to make my argument, to establish by this witness that there is no such supplement.

The Court: He will be kept here as a witness, and if they get the record here, after they get the record here, I will let you recall him for that purpose; that is, for cross examination, and he may be recalled for that purpose. Let me suggest, when you get those rates or reports, that you stipulate with them just exactly what the facts are.

Mr. Payne: Your Honor, I am quite willing to stipulate any fact that is a fact. That is all Mr. Topping.

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By the Court: Now we have made progress here in an hour and ten minutes than we made in two days. Call your next witness. Now I will put in the record that admission in this case apply only to this case. Only apply to this trial in this case unless it is otherwise specified in the stipulation. Get your witness in here.

By Mr. Chambers: I called for two of them and they are not here.

By the Court: You must tell them that they must stay here. Now let one of the bailiffs go out there and tell those witnesses that they must stay here or they will get an attachment issued for them. You had better get in touch with your witnesses and keep them here.

By Mr. Chambers: I don't know why they are not here, I suppose they would be here.

Whereupon, JOHN F. HAIGH, called as a witness on behalf of the United States, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Haigh by Mr. Chambers.*

Q. Please state your name to the court and jury?

A. J. F. Haigh.

Q. Where do you live Mr. Haigh? A. Jenks.

Q. Jenks, Oklahoma. A. Yes, sir.

Q. And what is your business?

A. Superintendent of a casinghead gasoline plant.

Q. What is the name of the casinghead gasoline plant of which you are Superintendent? A. The Ajax Gasoline Plant.

Q. Located at Jenks? A. Yes, sir.

Q. How long have you been connected with that institution?

A. I have been superintendent for about twenty months?

Q. You have been superintendent for about twenty months and how long have you been with that institution?

A. A little over three years.

Q. Have you been with any other casinghead gasoline plant prior to that time? A. No, sir.

Q. What were your duties and position when you first went with the Ajax? A. Chief Engineer.

Q. Did that have anything to do with the manufacture of the product from casinghead gasoline plants? A. Yes, sir.

Q. Well it was merely the mechanical work of running your engine, was it or did you have somthing else to do with the manufacture of the materials? A. I had charge of the plant operation entirely.

Q. You had charge entirely of the operation of cars?

A. No, the entire operation of the plant.

Q. Are you familiar with the methods, used in compression plants—is yours a compression plant? A. Yes, sir.

Q. Are you familiar with the method by which the product is manufactured and produced at the casinghead plant?

A. Yes, sir.

Q. What is the name of the commodity which you produce? A. Gasoline.

By Mr. Diggs: If the Court please, we move to exclude the answer of the witness on the ground it is not shown he possesses this expert knowledge necessary to state the name and character of the article produced.

By Mr. Chambers: I cannot conceive of a more competent man to determine the product than the man who produces himself and had familiarized himself with the product and made it before *it before* it is produced as an expert, I mean.

By Mr. Diggs: In order to save time and save my record to this character of evidence of witnesses on this subject if it may be agreed the defendant has the right to strike it out after the close of the Government's case if it is not relevant and material I will wait until then and save a whole lot of time in putting in exceptions to the different questions.

By the Court: Very well.

Q. How long have you been producing this material from the compression plant, Mr. Haigh?

A. Ever since the plant was built three years ago.

Q. Did you ship your product from the casinghead plant?

A. Yes, sir.

Q. And prior to the shipping of the commodity—

By the Court: Let me see, just wait. What sort of a plant is that, a compression?

A. A compression plant, casinghead.

By the Court: Casinghead gas?

A. Yes, sir.

By the Court: And you get that from the gas pumped from the wells?

A. Gas comes off the oil wells.

By the Court: And then you compress it?

A. Yes, sir.

By the Court: And what do you say now when you compress it, what do you call it, what do you call the commodity after, after it is compressed.

A. Gasoline after it condensed.

By the Court: What do you mean by condensed?

A. Run through a set of cooling coils and condensed into a liquid form.

By the Court:

Q. That is a part of the process of compression?

Mr. Chambers: That is a part of the process they have all testified to.

The Court: Well, I am asking him.

Q. That is a process of compressing, the condensing of it?

A. Yes, sir.

Q. Then you say, after you get it through the compression, you call it gasoline? A. Yes, sir.

Q. Suppose you were to combine one-third naphtha and two-thirds of the commodity after it was compressed, what would you call it then? A. Gasoline.

Q. Just the same name you would before? A. Yes, sir.

Q. Why do you call it gasoline when it is through the compression process? How do you get the name gasoline?

A. Simply as a trade name.

The Court: Go ahead.

Q. That is a name that is used by the people that you have come in contact with who produce this material, is it?

A. Yes, sir.

Mr. Diggs: We object to him leading the witness.

Mr. Chambers: Well, I was just simply following up the question of the Court. It was inadvertent on my part.

Mr. Swacker: I would like to ask that the previous answer and question be stricken as a conclusion. He has not shown he is qualified.

The Court: Yes, I will strike that. Of course, he can testify as to the trade custom, but he first has to put the fact in there and lay the predicate for it.

Q. Now, do you produce, prior to shipping the gasoline, which you take from the compressor plant, do you prepare that for shipment in any other way excepting by blending?

A. No, sir, not at our plant.

Q. You don't weather it at your plant?

A. No, sir, it is not necessary.

Q. Now, how many gasoline plants are there at Jenks of this character? A. I don't know.

Q. Well, you know some of the plants there, don't you?

A. Yes, sir.

Q. Well, can you name some of them? A. Yes, sir.

Q. I wish that you would give all that you know of and that you remember.

A. Well, there is the Totem, John Tell, Kelly, Swanson & Black; Texas Company; Tribes Gasoline Company and the Oklahoma Petroleum & Gasoline Company; Oil States Gasoline Company; Gypsy.

Q. Would you say that Jenks is quite a place for the manufacture of this commodity in the manner in which you manufacture it?

Mr. Swacker: I would like to object to that; not shown the witness is qualified; quite a place is a very indefinite term.

The Court: How many casinghead plants are there?

A. I don't know.

The Court: Well, about how many, as many as ten?

A. I think so.

The Court: Well, you know whether there is ten or not, don't you?

Mr. Chambers: Give your best judgment.

A. Yes, my judgment is that there is at least ten.

Q. Now, then, these plants that manufacture this commodity that you call gasoline, do they manufacture that by the compression method? A. Yes, sir.

Q. Are you familiar—you are familiar with the manner in which various plants manufacture their gasoline?

A. No, sir.

The Court: How many plants are you familiar with, as to how they manufacture?

A. I am familiar with all that our own company owns.

The Court: How many do they own?

A. Five.

Mr. Chambers: This is going to be a leading question and don't answer it.

Q. You have tried to inform yourself with the manner in which the other plants operate, haven't you, and the character of the plant, as to whether they manufacture this gasoline by compression the same as you do? A. Yes, sir.

Q. And you have informed yourself with reference to that matter, haven't you?

A. I know that all of them operate on the compression system there.

Q. Well, the compression system, they may use different machineries, but the system and the plant and the method is exactly the same, and has to be, don't it?

A. Not necessarily.

Q. I mean in the compression plant?

The Court: In principle?

A. In principle it is the same.

Q. In principle, the compression plant of all of them is the same? It is the same method of getting out the gasoline from the casinghead gas, ain't it? A. Yes, sir.

Q. Now, then, you ship your commodities, you say, after you blend it? A. Yes, sir.

Q. I will ask you to state, how long have you been shipping it? A. Billing it, you mean?

Q. Yes, billing it out? A. Since August, 1918.

Q. And I will ask you to state the designated name by which you bill out your commodity?

Mr. Diggs: I suppose this would still fall under that objection—

The Court: Yes.

A. We bill it as liquefied petroleum gas.

Q. As liquefied petroleum gas. Under what condition?

Mr. Diggs: Now, we move to exclude the statement

of facts contained in that [portion illegible at bottom of page] and immaterial under the issues in this case.

The Court: Yes. I don't think that is competent.

Mr. Chambers: You mean as to the manner in which he bills it out?

The Court: How could that affect it?

By Mr. Chambers: If the Court please I take it that if prior to December 2nd, 1916, the Gypsy Oil Company and all other companies recognized this commodity only for trade purposes, the name of this commodity not only for trade purposes but as gasoline and gas shipped it under a gasoline rate that would be competent evidence to establish a proper designated term under which this is—unless after December 2nd, 1916, when the unrefined naphtha rate was put into force it can be established that the commodity was not, while it took the rate as gasoline was not gasoline but unrefined naphtha, I show you two federal cases.

By the Court: I don't believe the cases are in point.

By Mr. Chambers: They are in point on this proposition in evidence in each one of the cases the Court recognized the test in reference to the manner in which the custom officers has designated these commodities, that were imported. Now we are trying to show by the shipper and by the carrier as to how the commodities in the absence of any rate with reference to unrefined naphtha—forget there is any rate as to unrefined naphtha, then this commodity should be shipped as gasoline and designated as gasoline because under the tariff—

By the Court: Let me show you what is driving in my mind and let you answer it. Now Congress is presumed to legislate as to its customs and tariffs in accordance with the terms used in the administration by the custom officers so you prove the way the Interstate Commerce Commission as to how they charged these rates and how they used these terms and these classifications.

By Mr. Chambers: But those decisions also recognize—

By the Court: Just wait until I get through—

By Mr. Chambers: I thought you were through, I beg your pardon.

By the Court: These people are presumed to know all about this. Now you go and say how this man—prove how this man billed out a specific act, how are they going

to meet that, you would have a thousand collateral issues, a thousand collateral issues, you say he billed this stuff out, how is he going to meet that, how can he know on the trial and how could they get ready. Would have to keep this Court adjourning and give them opportunity to see if it is so. I think as far as you can go is for these men to answer if this is gasoline, just like I would go down there and get a dipper of water and I know it is water. If they know that, why do they know that? Because it is universally called that, but by people that deal in it I think is as far as you can go.

Mr. Chambers: Well, will your Honor pardon me, I can't see why that isn't one circumstance in connection with others. For instance, one produces this same commodity and calls it gasoline, billed it and shipped it as gasoline, all prior to December, but it is one means of establishing the fact.

The Court: Take these books and show me where any Court has held that.

Mr. Chambers: 152 United States, and they permitted you to go to the dealers, to the general dealers and sellers of the commodity itself and prove by them as to the manner in which they sell it, as to whether they sell it as that commodity or this commodity. You have to go to one dealer and then another. We go to one shipper and then another shipper, and to one manufacturer and then another manufacturer, for the purpose of showing that in the industry itself it is recognized under all of its phases, both as to manufacture and shipment as this one commodity and especially if the Court will listen to me for one moment, prior to the time unrefined naphtha was put into effect, it was recognized shipping term under which this commodity was transported by all of the companies and by all of the railroads.

The Court: You did not ask whether if it was shipped by all railroads. You just asked him how he shipped it.

Mr. Chambers: I can't. I have got to bring on other witnesses to show that.

The Court: Go ahead. I will let it in subject to be moved to be stricken out.

Q. How did you bill your commodity?

A. Liquefied petroleum gas.

Q. Was it billed as liquefied petroleum gas where the pressure was below the ten pounds vapor pressure? A. No, sir.

Q. When you blend the commodity that you get from your plant with the naphtha, that is what you blend it with, ain't it? A. Yes, sir.

Q. When you blend it with that, doesn't it bring it down below the ten pound vapor pressure? A. No, sir.

Q. Well, it does occasionally bring it down?

Mr. Diggs: Your Honor, I think counsel should be required to keep within the rule and not suggest the very answer.

The Court: Yes, I think that. Don't lead the witness.

Q. What is the effect of blending your gasoline that you take out of your compression plant with the naphtha, with reference to the vapor tension? A. It lowers it.

Q. Is it your purpose—or, what is your purpose with reference to blending it? That is as to whether or making it subject to be shipped? A. Yes, sir, simply for market.

Q. Putting it upon the market? A. Yes, sir.

Q. Now, if it is above the ten pounds vapor pressure, you designate it in your shipping order liquefied petroleum gas? Do you ever ship any where the vapor pressure is less than ten pounds? A. We have. We haven't any at present.

Q. And how did you designate that? A. Gasoline.

Q. For what reason did you designate this commodity liquefied petroleum gas when you shipped it and it was above the ten pound vapor pressure?

A. By order of the Bureau of Explosives.

Mr. Chambers: That is all.

*Cross Examination by Mr. Diggs.*

Q. Did you say your name was Haigh? A. Yes, sir.

Q. Mr. Haigh, is it a part of your business, as superintendent of the plants you have named, to attend to the shipping of your product? A. Yes, sir.

Q. In shipping that product, it is your purpose to bill and describe it by the name which you consider it should be billed under the tariffs established by the Interstate Commerce Commission, is it?

\* A. I bill as ordered by our sales office.

Q. What? A. I bill as I am ordered to by our sales office.

Q. Then, if you bill it as ordered by your sales office, you don't bill this product because you consider it to be gasoline or liquefied petroleum gas, but because you receive orders from your superiors so to bill it?

A. Primarily, yes, sir.

Q. You say that you know this product to be gasoline and

can you tell me the constituent elements of the product known on the market generally as gasoline? A. No, sir.

Q. Can you tell me the constituent elements of the product you produce from your plant which you say is gasoline?

A. No, sir.

Q. Can you tell me the particulars in which the product produced by you resembles or has in common with the article "generally purchased on the market as gasoline?"

A. It has practically the same burning and explosive qualities, the gravity and vapor tensions are the same as the other articles.

Q. The products produced by you you think has the same gravity as the gasoline you buy on the market do you?

A. After it is blended.

Q. After it is blended. How much do you blend it?

A. 56 to 58.

Q. Now as a matter of fact before you blend this article you call it raw gasoline don't you? A. Yes, sir.

Q. After you blend it you call it naphtha blend, don't you?

A. We have always designated it as gasoline.

Q. You have always designated it in your plants as gasoline. And the product that you shipped as liquefied petroleum gas is the same article you call gasoline except one has a blend in it and the other has not. Is that true? A. I can't say.

Q. You can't say? I understood you to say you had charge of the shipping? A. Yes, sir.

Q. And it is your duty also to see to the production of this article? A. Yes, sir.

Q. And how it gets on the market. In that connection are you familiar with the rules provided by the Corporation Commission as to how the product produced by your plant shall be sold and when it shall be called and treated as gasoline and when and how it shall be called and considered unrefined naphtha?

By Mr. Chambers: We object to that as being incompetent, irrelevant and immaterial and the time not having been specified.

Q. During the time that you have been making the shipments you testified here—

By Mr. Chambers: I object to that for the reason there is nothing to show that the corporation commission made orders of that kind but we object to it on the other grounds also.

By Mr. Diggs: I will state to the court I asked him this question for the reason they have used him as an expert as to what it is named, the designation of these articles.

By Mr. Chambers: But he is assuming—

By the Court: If he knows that, ask him if he is familiar and knows.

By Mr. Chambers: Note our exceptions.

A. We don't sell anything in Oklahoma, I am not familiar with the rules of the Corporation Commission.

By the Court: These shipments are all interstate shipments.

A. Yes, sir.

By the Court: Where is it sold if it is not sold in Oklahoma?

A. Kansas City, Missouri.

Q. You ship your article to Kansas City, Missouri and sell it there? A. No, sir.

Q. Well then *were* do you sell it?

A. All over the United States.

By the Court: You mean you ship it from your plant to Kansas City, Missouri?

A. No, sir, we ship to all points where the cars are called for.

Q. Is it your practice to ship from Oklahoma the cars of your product, it is not sold at the time it leaves your plant, but it is to be sold by you at the time it arrives at the point of destination?

A. You mean on shippers orders?

Q. You know what a sale is?

By the Court: Consigned to a broker or anybody else to be sold?

A. No, sir.

By the Court: Then why do you say the product is not sold in Oklahoma?

A. Because the sales office is located in Kansas City, Missouri.

Q. You mean by that the persons to whom you sell it all reside at other places than Oklahoma is that it? A. Yes, sir.

Q. And don't consider the sale until it arrives at the destination of the purchasing person ordering it?

A. The sale is negotiated with the sales agent in Kansas City, Missouri.

Q. By whom? A. By Mr. Walter Crosby.

Q. And you are told by him—who is Mr. Walter Crosby?

A. He is the sales manager for the Ajax Gasoline Company.

Q. Then you deliver it on the cars here in accordance with his instructions? A. Yes, sir.

Q. And where is the price paid?

A. At the Kansas City office.

The Court: And under that system of sales and business, you ship it in the name you have stated?

A. Yes, sir.

The Court: Go ahead.

Q. Mr. Haigh, what is the gravity of the raw casinghead gasoline produced by you?

A. It varies from 80 to 84.

Q. Varies from 80 to 84. To what gravity do you reduce it before shipping? A. Above 56 and below 58.

Q. When your raw casinghead gasoline is produced and the gravity is between 80 and 84, did you say? A. Yes, sir.

Q. Between 80 and 84, is that commodity in shape to be generally used in the market as gasoline? A. No, sir.

Q. It is not. All the part of your gasoline that you ship and sell in Kansas City is shipped to refineries, is it?

A. No, sir.

Q. It is not. All the raw that you ship is shipped to refineries? A. It has been in the past.

Q. I say, all you have shipped was shipped to refineries?

A. Yes, sir.

Q. To be refined by them?

A. I suppose so. I have no knowledge.

Mr. Chambers: Well, we move the court to strike that answer of the witness from the record and the jury be instructed not to consider it.

Mr. Diggs: In substance, I asked if he shipped to this refinery, and he said yes; I then asked if he sent it to them to be further refined.

Mr. Chambers: He said he supposed so; he didn't know.

The Court: What was your answer? You suppose, but you don't know?

A. Yes, sir.

The Court: I will strike that out. Do you know what they do with it when you ship it there, of your own knowledge?

A. No, sir.

Q. All the shipments you have made, Mr. Haigh, are shipped to points north of your plant, aren't they?

A. All the shipments of the blended.

Q. Yes, and all raw casinghead? A. No.

Q. Do you ship all your raw casinghead gas north?

A. No, sir.

Q. Do you ship all of your blend north?

A. All I have ever shipped has gone north.

Q. Do you know whether, over the lines that you have shipped your blended gasoline going north, there was in force a rate or traffic regulation permitting your product to be shipped as unrefined naphtha?

Mr. Chambers: We object to that as incompetent and irrelevant; assuming a fact that has not been established; assuming that there was a tariff.

[] What I am getting at, is the rate for this product, assuming that there was a rate for this product—

The Court: I will permit you to ask him whether he knows at that time whether such shipment was made there, and was there a rate on unrefined naphtha.

Q. Did you know, at the time you made the shipment of this blended casinghead gasoline to which you have testified, if there was any other tariff rate under which you could ship it or describe it, than gasoline?

Mr. Chambers: I object. The question the court suggested—I have no objection to it, but this is asking for the conclusion of this witness.

Mr. Diggs: He testified he shipped this petroleum gasoline in accordance with the rules and the regulations.

The Court: I will permit you to ask him if there was a rule or a regulation by which unrefined naphtha or anything else could be shipped. I will permit you then to ask him that specific question, but I will eliminate the conclusion, and then if he says, if he states yes, then I will let you follow that up with the other question.

Mr. Diggs: If I gather the court's direction—

The Court: Ask him, was there a rate on unrefined naphtha, and he says yes, then you would be permitted to ask him why he did not ship it under that or this, so that is sort of a compound question.

Q. Was there a rate on unrefined naphtha between the shipping point to which you shipped your blended gasoline from and to the points to which they were shipped?

✓ A. I do not know.

✓ Q. On unrefined naphtha?

The Court: He said he did not know.

✓ A. I don't know.

Q. You do know, however, the rate and the kind under which you must ship your raw casinghead gasoline, going north or south?

The Court: Do you know the rate at the time you made the shipment?

A. No, sir.

Q. Do you know anything about the tariff, Mr. Haigh?

A. Very little.

Q. And your only purpose in designating, you only designated the name under which this product is shipped in the bills of lading by the direction of your superior?

A. Yes, sir.

By the Court: Now my understanding is you are directed to do that by this general sales agent that sells this commodity at different places over the United States?

A. By the sales agent and by the Interstate Commerce Commission.

By the Court: Well the sales agent whom you understood was directing you under those regulations?

A. Yes, sir.

By the Court: Mr. Haigh what did you say was the gravity of raw casinghead gasoline after you had blended it for shipping?

A. Between 56 and 58.

Q. When you had reduced that raw casinghead gasoline as you call it to 56 or 58 gravity the article you would ship north then would only have from five to ten per cent or a little more than that of casinghead gasoline in it wouldn't it?

A. It would be more than that.

Q. You think so? A. I know that.

By Mr. Diggs: Alright.

By the Court: Now then when you say you were following the instructions of your general sales agent and the regulations of the Interstate Commerce Commission how did you get those regulations?

A. One copy was sent me by the Interstate Commerce Commission and the sales agent sent me another copy.

By the Court: When he gave you instructions about the shipment he sent you copy of those regulations from the Interstate Commerce Commission.

A. Yes, sir.

By the Court: Go ahead, I just wanted to get that clear in my mind, that is the reason that I asked the question.

Q. Mr. Haigh after you have produced your raw gas with gasoline by blending to 56 to 58 gravity how much of your original raw casinghead gasoline is in that mixture so prepared? A. About twenty-five per cent.

Q. How much of that original casinghead gasoline would be in there at the time it got to market?

A. I don't understand the question.

Q. Can you state how much at the time this blended product gets to market are you able to state approximately, what at the time you ship it, are you able to state approximately how much of the original casinghead gasoline would be in it in your judgment?

A. About twenty-five per cent at the time we ship it; I don't know about the arrival.

Q. 25 per cent at the time you ship it. Alright that is all.

*Redirect Examination by Mr. Chambers.*

Q. What is the color of your naphtha you put in with the casinghead gasoline? A. Water white.

Q. And what is the color of the commodity after you have mixed the casinghead gasoline and the naphtha together?

A. White.

Q. Where do you get your naphtha?

A. We bought some from the White Eagle at Augusta, and some from the Texas.

Q. You don't manufacture that yourself? A. No, sir.

Q. You buy it from the refineries? A. Yes, sir.

By the Court: What proportion do you use in blending?

A. Well, it varies to seventy-five per cent naphtha to reduce it to that gravity.

By the Court: You would have about two of naphtha and one of casinghead gasoline?

A. Nearly three to one.

By the Court: Go ahead.

By Mr. Chambers: That is all.

*Recross Examination.*

Q. Mr. Haigh, are you able to state what was the gravity of the naphtha you used in blending, to blend with your raw casinghead gasoline? A. It was from 50 to 51.

✓ Q. From 50 to 51? A. Yes, sir.

Q. Your method being that, the Baume method?

A. Yes, sir.

Q. In making your blend, did you make it in accordance with any distillation test specifications? A. Yes, sir.

Q. What are they?

A. They are recommended by the Bureau of Explosives, C. J. Tagliadue Manufacturing Company.

Q. But you—by this blending that you have described, you made the finished product? A. Yes, sir.

Q. And in your judgment, the best judgment, your best judgment, this finished product is gasoline? A. Yes, sir.

(Witness dismissed)

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Whereupon, E. J. LEAGUE, a witness on behalf of the Government, having been first duly sworn, according to law, was called as a witness and testified as follows, to-wit:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. E. J. League.

Q. Where do you live? A. Chicago, Illinois.

Q. What is your business?

A. I am inspector of the Bureau of Explosives.

Q. How long have you been connected with the Bureau of Explosives, is that what you say it is?

A. Yes, sir, since March 1st, 1916.

Q. And what was the nature and character of your duties in your employment of the Bureau of Explosives?

A. To inspect preparation and handling of shipments of explosives and other dangerous articles by common carriers.

Q. That was general? A. Yes, sir.

Q. Did you, in the carrying out of your duties, have occasion to inspect the gasoline and casinghead gasolines?

A. Yes, sir.

Q. Was that one of the—gasoline and casinghead gasoline was one of the commodities that came within the jurisdiction, if that is the proper word, of the Bureau of Explosives?

A. Yes, sir.

Q. Now, have you had any experience with reference to the inspecting of gasoline and casinghead gasoline.

A. In so far as the I. C. C. Regulations are concerned, yes, sir.

Q. Well, the I. C. C. Regulations is the Interstate Commerce Commission regulations? A. Yes, sir.

Q. The Bureau of Explosives, it was their business of inspecting under the rules and regulations of the Interstate Commerce Commission, as well as our own rules and regulations, is that right? A. Yes, sir.

Q. That is a government institution, is it? A. No, sir.

Q. It is a railroad institution? A. Yes, sir,

Q. You are not a government officer, then? A. No, sir.

Q. Well, did you have any experience in testing, under the rules and regulations, casinghead gasoline in Oklahoma?

A. Yes, sir.

Q. And have you had experience in that line in other fields besides Oklahoma? A. Yes, sir.

Q. In what other fields?

A. Wyoming, Pennsylvania, West Virginia, Illinois, Ohio; that is all I recall.

Q. Well, your duties, then, have demanded your attention at all of the casinghead gasoline places where it is produced?

A. Nearly all of them, sir.

Q. Now, what else have you devoted your attention to that commodity—I believe you said you went in, in March, 1915, with the Bureau of Explosives, what else?

A. Practically all of that time up to May 1, 1919, with the exception of possibly six months.

Q. What were your qualifications in inspecting—just quit, cut that out—in inspecting this casinghead gasoline, what was the nature of your duties to make the inspection as it should be made, according to the Bureau of Explosives regulations?

A. My main object was to determine the vapor tension.

Q. Your main object was to determine the vapor tension?

A. Of the gasoline.

Q. That was to secure safety? A. Yes, sir.

Q. As near as possible? A. Yes, sir.

Q. Well, now then, did you ever have anything other than, did you make any other tests or investigation as to this commodity? A. Only tested the gravity.

Q. The gravity? A. Yes, sir.

Q. You would test it for the vapor tension and test it for the gravity? A. Yes, sir.

Q. When did you first come down to Oklahoma to make the inspection and test? A. June 1st, 1916, possibly.

Q. Give the first—June 1st, 1916? A. Yes, sir.

Q. Now, where did you make the test? Can you remember?

A. Yes, sir. Cushing, Drumright, Sapulpa, Kiefer, Cleveland, practically all of the towns where casinghead gas is made in Oklahoma.

Q. What was the characteristics, if I am getting at it right, of the gasoline commodities that you tested and inspected?

Mr. Swacker: I would like at this time—I don't understand exactly what the question is, but I think we ought to know what the witness is being qualified for for that pur-

pose, otherwise there is a lot of irrelevant testimony. I thought it would have been developed by now, or I would have objected sooner. I think we should have a statement of what he is qualifying him for.

The Court: Yes. What is the object of it?

By the Court: What is the object of this.

By Mr. Chambers: I want to prove by him certain definite inspections he made of your Kiefer plant at and the commodities that he tested and the conversation that he had.

By the Court: Well, go on and ask him.

Q. Did you inspect the Kiefer plant? A. Yes, sir.

By Mr. Chambers: I haven't got to that yet, I just wanted to show his general supervision of this territory.

By the Court: Go ahead.

Q. Did you inspect the Gypsy Oil Company at Kiefer, its gasoline? A. Yes, sir.

Q. Do you know the character of the gasoline that you inspected and as to whether it was the raw material that came out of the compression plant of the material that was blended with naphtha or both of them? A. I have tested both.

Q. You have tested both? A. Yes, sir.

Q. And have you tested both of those commodities during the period from 1916, March, until May, 1919, at other places and at other plants in Oklahoma? A. Intermittently, yes, sir.

Q. And to what extent, what plants, all of them?

A. No, sir, not all of them.

Q. Well, I guess then you had better tell us what plants you did? A. About fifty per cent of them.

Q. About fifty per cent of the gasoline plants in Oklahoma? A. Yes, sir.

Q. During that period of time? A. Yes, sir.

Q. Well, could you make an estimate of how many tank cars of these commodities that you tested during that period.

A. No, sir.

Q. Well could you approximate whether it was several hundred? A. Yes, sir.

Q. Or several thousand which would you say?

A. Several hundred.

Q. Several hundred? A. Yes, sir.

Q. In testing these commodities have you had sufficient experience so you can determine the character of the commodities? A. In what respect?

Q. Whether it is easinghead blended or unblended?

By the Court: When you inspected it could you tell

whether it was a blended commodity or whether it was a commodity as it came from the compression plant?

Q. That is, were you able to make that distinction just from inspection? A. Ordinarily, yes, sir.

Q. How would you do that now?

A. In a great many instances I was guided by the vapor tension.

By Mr. Chambers: Permit me to go ahead this way and you can stop me when you want me to.

By Mr. Swacker: Alright.

Q. When you say you were guided by the vapor tension and it was below ten pounds you could see it was a blended product and if it was above that you could say it was pure casinghead gasoline, is that what you mean?

A. Ordinarily, yes, sir.

Q. How many cars did you inspect for the Gypsy Oil Company during that time. Let's put it at Kiefer to start with, about how many, have you a record of it?

A. There is perhaps a record of it in the New York office. I will say approximately about a hundred.

Q. At the Kiefer plant? A. Yes, sir.

Q. You made the vapor tension? A. Yes, sir.

Q. You took the gravity? A. Yes, sir.

Q. You took the color? A. No, sir.

Q. Could you tell to the court and jury *was* what the color was as far as the naked eye was concerned?

A. It was water white.

Q. Water white? A. Yes, sir.

Q. Did you in 1916 and prior to December 2, have any talk with the superintendent at Kiefer? A. No, sir.

Q. Did you have any talk with Mr. Donovan, General Superintendent?

A. Yes, sir, I have had conversations with him.

Q. Prior to December 2nd, 1916? A. Yes, sir.

Q. That would be the first time you come down here?

A. Yes, sir.

Q. Do you know Mr. Millard of the Gypsy plant at Kiefer?

A. Yes, sir.

Q. And did you talk with him on that first occasion?

A. Prior to December 2nd, 1916?

Q. Yes, sir, you said you were here in June, I think you said?

A. Yes, sir, I have had conversations with him.

Q. Did either Mr. Donovan tell you what the material was that he was manufacturing at Kiefer?

A. Casinghead gasoline.

Q. Did he tell you what the product was? After he had put the naphtha in it and tell you how he was shipping it?

A. Casinghead gasoline.

Q. Did he tell you he was shipping it as casinghead gasoline or gasoline after it had been blended?

A. I don't recall any stated term that he used.

Q. But he used the term casinghead gasoline when you spoke of this product at all times, did he?

A. Prior to December 2, 1916, yes, sir.

Q. Prior to December 2, 1917, did he use any other term for it except casinghead gasoline?

A. I don't catch the date.

Q. Prior to December 2, 1916, did he use any other term except casinghead gasoline? A. Not that I ever heard.

Q. Did Mr. Millard? A. That is all I ever heard.

Q. Did Mr. Millard use the term casinghead gasoline prior to December 2, 1916, in his conversations with you?

A. Yes, sir.

Q. Did he use any other terms? A. No, sir.

Q. After December 2, 1916, did you examine the commodities that they had down there? A. Yes, sir.

Q. Can you tell whether it was the same commodity you examined prior to December 2, 1916.

By Mr. Swacker: Now, I merely wish to object to that as being incompetent, irrelevant and immaterial on the same basis we made objection to all of that matter, outside the period of time when there was an unrefined naphtha rate in effect on the grounds it violates the res inter alias acta rule. Just save an exception.

By the Court: Now what time did you ask him about?

A. I am asking him now if he had a conversation with Mr. Millard with reference to the designated name of the commodity prior to December 2, 1916, as to what it was. He said it was gasoline. Now I asked him if he called it any other name.

By Mr. Swacker: He said casinghead gasoline.

By the Court: I don't think he can prove conversation with Mr. Millard. I will allow you to prove the conduct of the business what they shipped and what they did. Now to prove what some man says unless he is the agent of this company I don't think you can do that.

By Mr. Chambers: He was the superintendent.

By the Court: Not of the Gulf Refining Company. They Gypsy is not on trial.

By Mr. Chambers: I understood we had that connected up.

By the Court: I don't so understand.

By Mr. Chambers: Then that will necessitate recalling this witness.

By Mr. Diggs: I don't like to interrupt the gentlemen but it appears in this record already that this so-called casinghead gasoline was always shipped under the name of gasoline prior to—

By the Court: They want to prove prior to that the officers Mr. Millard, the manager and superintendent stated that. I won't allow them to do that unless they show that the Gypsy was the agent of the Gulf. Now the act, that is a fact, the action of the company what they did, that is a fact.

By Mr. Chambers: I think we have been misled. I think I have misstated it and I *thin*—the question I asked was as to whether or not the material he investigated afterwards was of the same character of material he investigated prior to December 2, 1916. That was the question I believe.

Q. In your opinion, was the commodity that you testified you investigated after December 2, 1916, the same commodity, the same character and same commodity investigated prior to that time? A. Yes, sir.

The Court: I will let him prove that, but not what the officer said.

Mr. Swacker: I make the same objection. It is irrelevant, incompetent and immaterial.

The Court: Very well. Let's see what they said. I will see.

Mr. Chambers: I identify this as Government's Exhibit 58 and 59.

Q. I hand you Exhibit 58 and 59. —

Mr. Chambers: I am going to introduce these after I question him in regard to them.

Mr. Swacker: I don't regard them as being important, but we will object to them when offered.

Q. What are those exhibits, Mr. League?

A. My reports on several cars of casinghead gasoline manufactured by the Gypsy Company.

Q. Now, do those reports of yours show the material and —rather, show the nature and character of the inspection and

investigation you gave these cars, and you got a sample of the character of the cars in general? A. Yes, sir.

Q. Now will you tell me just from those reports, what it is you have to take into consideration in your investigation?

A. Mainly the vapor tension.

Q. Mainly the vapor tension? A. Yes, sir.

Q. Do you take the gravity? A. Yes, sir.

Q. Ain't there anything else you do to it? Take the temperature?

A. We take the temperature at the time our inspection is made, how the commodity is loaded, what method is used to make the gasoline, what it is blended with.

Q. Now, taking these reports that you have got, what does it say, whether it was the straight commodity from the compressor, or whether it was blended, you report on that, don't you?

The Court: I am not going to permit you to introduce those reports in evidence. You can show them to him, if he made them, to refresh his recollection, so he can testify what he did.

Mr. Chambers: Then it will be proper for me to ask him if he made a report?

The Court: Yes, but not put in the record what they say and things like that.

Q. Well, did you make a report?

The Court: Just show him that, and ask him if he made that report at the time, and he can have that to refresh his recollection, and then ask him what he found.

Mr. Chambers: Well, that is what I am doing.

The Court: No, you asked him what that thing shows, and the stenographer is putting it into the record.

Mr. Chambers: The only thing is, I am using this as a guide to myself, and he has got the other.

The Court: Yes, but they are putting that in the record, and I am going to keep the record straight.

Mr. Chambers: Well, it is just a misapprehension on my part.

By the Court: You asked him what that thing shows. If he answers that then that is reading that report into the record. So that report is only competent for him to refresh his recollection.

Q. Tell the Court—well pardon me I didn't intend to put it that way. I intended if the report showed as to whether the material was blended or not.

By the Court: Just show him the memorandum of his report and ask him was the material you inspected blended or was it the product of the casinghead gas at the close of the compression.

By Mr. Swacker: I have no objection to the witness taking that paper and giving the car number and saying what he did and found but not what he said about it.

Q. Will you take this paper and tell me what cars you examined, the numbers of the cars that you examined?

A. G. R. C. X. 2149; 1708, 2120, 2116 and 2185.

By Mr. Chambers: Do I understand these are in the indictment?

By Mr. Gann: The last one appears not to be in the indictment.

By the Court: Strike out that last one.

Q. Were those cars, cars that were shipping the immediate product of the compression or of the blended material?

A. Blended material.

Q. And when did you make that investigation? A. March 14, 1918.

Q. And what was the vapor tension? A. Ten pounds.

Q. And what was the gravity? A. 73.5.

By Mr. Swacker: At what temperature?

A. That is the corrected gravity.

By the Court: What was the temperature?

A. 61.

By Mr. Swacker: That isn't the gravity at the temperature 61?

A. No, sir, that is the corrected gravity at 60.

Mr. Swacker: You did not find it that gravity, but the temperature having been 61, you computed it it would have been that gravity had the temperature been sixty, and that is what it states?

A. Yes, sir

Mr. Swacker: Not what the fact is, but it would have been if had been sixty?

A. Yes, sir.

Q. That is the manner in which you take gravity?

A. Yes, sir.

Mr. Chambers: I believe we will offer that in evidence.

Mr. Swacker: I am objecting as not shown to have

come to the defendant in any shape or form, and may be a characterization of his, and we regard it as improper and not binding on the defendant.

The Court: That is an inspection made by?

Mr. Chambers: A railroad man.

The Court: I will sustain the objection. That goes—a paper must either be an official document that binds everybody or it must show some connection with the defendant, that is the way it looks to me. I don't see how it could be competent under any purpose.

Q. These reports were not submitted to any of the officers of the Gypsy Oil Company, or copies submitted to them?

A. No, sir.

Q. Merely a transaction direct between you and the Bureau of Explosives? A. Yes, sir.

Mr. Chambers: I think that is correct. I will not insist on them.

The Court: I sustain the objection.

Q. Now then will you say that you examined probably fifty other—that you examined fifty per cent of the casinghead gasoline plants in the state? A. Yes, sir.

Q. And some of them—did you examine all the plants at Keifer? A. Yes, sir.

Q. You examined all the plants at Jenks? A. Yes, sir.

Q. Did you examine all the plants at Drumright?

A. Yes, sir.

Q. Do you know how those other plants were describing and shipping their—by name, the products of their compressors? A. Yes, sir.

Mr. Swacker: I object to any answer to that as being incompetent, irrelevant and immaterial. He has not shown the conditions were the same there with reference—

Q. That is right. I had probably better ask that. Were the commodities that you examined from these other plants of the same kind and character as the commodities that you examined at the Gypsy Company plant? A. Practically so.

Q. Now, how did all these other plants ship their commodities, and what did they call it and designate it for shipment?

The Court: How does he know how it was shipped?

A. I make an inspection.

Q. Did you inspect—in your report you reported upon each particular car that you inspected? A. Yes, sir.

Q. Now, then, these cars for these other people, how did they ship and designate the commodity that they were shipping prior to December 2, 1916, and after December 2, 1916, up until the time you say May, 1919.

Mr. Swacker: I object to that question, or answer to it, as being incompetent, irrelevant and immaterial, in no wise binding on the defendant here, and incompetent for the reason that it is not shown the conditions were the same, in so far as to what the tariff regulations were that might control such other parties, and how they should ship and designate their products.

Mr. Green: We might further object on the ground that it is a conclusion of the witness.

The Court: The jury may be excused for about five minutes.

And thereafter court convened after a short recess and the following proceedings were had, to-wit:

By Mr. Chambers: That is you want to hear from me.

By the Court: Yes I will hear you.

By Mr. Chambers: If the Court please the position I take is this that this testimony is competent not only for showing intent, which we don't care to present at this time. The principal point I want to impress upon the mind of the Court is this, that this article if possible should be designated by a name that would bring it within the regulation of the tariff, forgetting that there was anything such as unrefined naphtha in the rate, the railroad companies, the shippers and the people who were dealing with the commodity designated it as gasoline not only for the purpose of the name being used by the commercial and trade name or establish what the name was, but forgetting and eliminating that it was for the purpose of showing that the trade considered it, shippers considered it and the carriers understood and designated this particular article for shipping purposes as gasoline. Now the Court don't read—if you will permit me to have one of those Federal Reporters 151 and 147. The Court don't read the authorities, I mean you probably don't lay the same stress on them that I do. It is true that it is not a question directly decided in this case. This is a case though of the Circuit Court of Appeals and it dwells especially on the proposition that evidence was introduced in that case for the purpose of determining the rates that was established upon this particular commodity that is in controversy by the custom officials. It says, but of course

that would include the importer or exporter of the commodity and in this case the Court not only admits that character of testimony but bases his decision to a great extent, I take it that it does from this language. While this provision is in force while opium was universally classified by the custom officers at New York as subject to duty as " \* \* \* etc" and he recognizes the evidence was introduced so it merely mentions how this particular commodity was regarded and classified by the custom officers which would show the manner in which it was brought in and put through the custom houses. He says articles answers that description,—

By the Court: You have not offered evidence that they went down there and classified it but your evidence shows that the shipper makes up his order he classifies it—

By Mr. Chambers: Now that makes it better evidence stronger still.

Mr. Chambers: If the railroad agent, knowing they classified, have permitted any article to be classified different from what it is, he is liable just the same as the shipper, and it is his duty. That is a part of a railroad officer's duty.

The Court: Yes, but you are trying to establish—you might say it was universal that the admission would be they did do it.

Mr. Chambers: That is just what I want to do.

The Court: Yes, but you can not establish it the way you started to do it. You can not ask him if the conditions are the same, and he says practically so. Now, you ask him—

Mr. Chambers: I am going to, with the permission of the Court, with reference to the other plants in Oklahoma.

The Court: I sustain the objection to this question, in the way it is asked.

Mr. Chambers: Now, then, in the 152 United States, which I presented to the Court yesterday, the Court held that the proper way of determining the manner in which rates shall be established is the commercial name of the article itself, if that can be determined. If not, then the name that was known by the people generally. I suppose that would be the proper way of saying it. Now, the Court noticed, they cited the 151 United States.

The Court: I have read that.

Mr. Chambers: I didn't give this to the Court, because I hadn't read it, but it goes into detail more than the 152nd, and holds the same rule and the same principle, as set forth in the 152nd. Now, the 147 Federal, while it is not as broad and comprehensive as the 151, I want—

The Court: One of them is just a District Court case.

Mr. Chambers: I believe it is just a District Court case. Of course, if the reasoning is good, it has its weight.

Mr. Swacker: Are any of those criminal cases? We haven't seen them.

Mr. Chambers: I don't think they are criminal cases, but the rule is, I can get any number of authorities, that the rule with reference to this evidence is the same in criminal as in civil cases. It shows the same as 155, of course, that evidence was introduced for the purpose of showing what the Custom House officials and the importers understood this commodity to be.

Mr. Swacker: Does your Honor care to hear our theory of the objection to the character of the evidence?

The Court: I am going to sustain the objection to this general question, and then let him frame a specific question, and lay a predicate and a condition.

Q. Now, then, what other plant besides the Gypsy plant is in operation at Keifer that you know of? Just name one of the same kind of a plant that you inspected.

A. Crosby & Gillespie.

Q. Crosby & Gillespie? A. Yes, sir.

Q. Did you make an examination of that plant to the extent that you know the nature and manner by which they manufacture casinghead gasoline? A. Yes, sir.

Q. Is it by means of compression, what we call the compression process? A. Yes, sir.

The Court: Same process as the Gypsy Company has?

A. Yes, sir.

Q. The Gypsy Company is a compression process?

A. Yes, sir.

Q. Now, then, did you examine any of the cars of blended material at this plant of Crosby & Gillespie? A. Yes, sir.

Q. Did you take the numbers of them, and had they been billed? A. Crosby & Gillespie?

Q. Yes? A. Yes, sir.

Q. Can you state as to whether—

Mr. Chambers: I believe we have already introduced evidence as to what the commodity was in the Crosby & Gillespie tank cars.

The Court: Yes.

Q. Now, how did they designate this commodity when they shipped it out?

Mr. Swacker: Now, we object.

Mr. Chambers: Pardon me, just one moment.

Q. The name or names they gave it? A. Gasoline.

Mr. Chambers: You mustn't answer while he is objecting.

Mr. Swacker: Now, we do object to that, as incompetent, irrelevant and immaterial. Our objection that it is immaterial and incompetent runs particularly to this position: the only circumstances that have been sought to be shown to be the same are the circumstances of what the commodity is, and even that is not at all fully covered.

The Court: The superintendent testified about that yesterday.

Mr. Swacker: Yes, sir, but he testified about some particular material, and that was the material that went to Port Arthur. We have already admitted this morning all about that, and he couldn't prove anything more about it than we admitted.

Mr. Chambers: And he could have answered that,—

Mr. Swacker: Here is the trouble about that.

Mr. Chambers: I am asking the witness.

Mr. Swacker: The contentions you make,—

The Court: The evidence showed yesterday that they shipped,—that certain shipments of their commodity was shipped to Port Arthur.

Mr. Chambers: Yes, sir. But, if you will pardon me, I don't care where they were shipped to.

The Court: Yes. But you have got in the evidence about that. Why not take up another one? Why do you want to go over it?

Mr. Chambers: I beg your pardon. I did not remember that fact. As far as the Crosby & Gillespie plant,—

Mr. Swacker: And this answer will be stricken from the record!

Mr. Chambers: No, sir.

The Court: They have admitted it was called gasoline.

Mr. Chambers: If they admit it, then you may call it that.

Q. Now, what other plant, tank cars of some other companies did you inspect?

The Court: Any other plant, you testified about the plant at Keifer, of the Gypsy Oil Company plant. Any other plant?

A. Yes, sir. The Chestnut and Smith.

Mr. Chambers: Have they been—

The Court: No, sir, nothing said about it.

Q. Did you investigate it there, those cars? A. Yes, sir.

Q. Is that the same character of compression plants, same method of making casinghead gasoline that the Gypsy Company has? A. Yes, sir.

Q. Was that a blended material? A. Yes, sir.

Q. Do you know that was shipped? A. Yes, sir.

Mr. Swacker: Just a minute.

Q. I will ask you to state what was the designated term under which that was shipped? Don't answer the question.

Mr. Swacker: We desire to make an objection.

The Court: You proved it was a blended material. What do you mean by a blended material?

A. Raw casinghead gasoline blended with some other petroleum product.

By the Court: Do you mean naphtha?

A. Yes, sir, that is one of them.

By the Court: I think that is too indefinite

Q. Do you know whether this company blended their casinghead gasoline with naphtha or not? A. Yes, sir.

Q. Did they blend it with naphtha? A. Yes, sir.

By the Court: Well now if he knows how they shipped that which was blended with naphtha, I will permit him to state the practice of shipping that.

Q. Answer the question.

By Mr. Swacker: Now, we object as being incompetent, irrelevant and immaterial. In the first place the circumstances not being shown to be similar or identical to admit evidence with regard to that.

By the Court: Wherein are they not similar. I am confining the question to the blended material where it is

from the combination of the product resulting from a compression of the casinghead gas with the naphtha.

By Mr. Diggs: If the Court please if you will permit us to state our objection then we *well* take up the question of the Court wherein the similarity exists.

By Mr. Swacker: I will take that question up for a moment. The similarity or lack of dissimilarity is insufficiently shown in this respect. This witness does not know nor has he attempted to state the quality of material or degrees of blending or quantities used in blending, whether the result in blend is anything like the same stuff shipped by the Gypsy and in the second place he is not attempting to confine it to points where there were unrefined naphtha rates in effect.

By the Court: I will overrule you on that point. What then, what about the question of naphtha blended with the raw—what you call the raw casinghead gasoline if you know how would that effect just what the product was?

A. If I knew the quantity of naphtha in each blend.

By the Court: What would the quantity of naphtha in each blend would that depend on the character of what the blended article was?

By Mr. Swacker: Would that determine what the blended article was?

By Mr. Chambers: That is for shipping purposes.

By the Court: Well what the commercial name would be.

A. That would not affect the name.

By the Court: That would not affect the commercial name?

A. No, sir.

By Mr. Swacker: Now I object to his answer on that as part of the evidence offered on the ground that he has not been qualified as to what were the commercial names of this product.

By the Court: I should think he should know, he is a man that is an inspector.

By Mr. Swacker: Well he doesn't inspect for the purpose of sale. He inspects for the physical characteristics.

By the Court: Now when you make your inspection

and make your report do you designate the name of the product that is in there that you inspect?

A. Yes, sir.

By the Court: Where do you get that name from?

A. We know that that is a gasoline plant before we go there, they make nothing else.

By the Court: Here is the point I want to know; is whether or not you solely make the designation of the name from your information or whether you get that from the different plants you talk to around or the trade, how do you determine the name you will give the product you have inspected?

A. I use the name that is known generally.

By the Court: How do you ascertain the name that is known generally, for instance they, you go down there and you find this commodity. Here is raw casinghead gasoline, gasoline which has compressed and you find some naphtha in there. Where do you get the information by which you designate the name that you are going to mark that car; how do you get the information to designate the name of that car?

A. By the name it is known by among the men around the plant, for instance or among shippers of that commodity?

By the Court: How long have you been at this business?

A. Since March 1, 1916.

By the Court: What was your business prior to that?

A. Assistant train master, P. & P. U. Railroad Company.

By the Court: I believe I will let him answer the question, state your exceptions.

By Mr. Green: May I make one suggestion to the Court? We take the position that it is immaterial first, even though it might be known as gasoline generally yet if the Court determines from the evidence we introduce here that it is further refined at Port Arthur, that it is an unrefined article and all this testimony is immaterial and irrelevant.

The Court: The authorities hold, away back in 103 U.S., that they say that the rates are presumed to be,—

Mr. Swacker: Railroad rates.

The Court: Rates.

Mr. Swacker: Does it not say custom rates?

The Court: Just as rates, but the custom rate grows out of the water shipment. Let me read the case.

Mr. Green: We are familiar with those line of authorities. They are different from the Interstate Commerce Commission for the fact that you take the proposition, it is a very technical proposition filed with the heads of the people who know what the commodity is and governs. For that reason, there might be a rate on clothing, and yet there might be a rate on gloves, and all those gloves are clothing. The glove rate would govern and it would be a very technical proposition which would be decided by the people that know.

The Court: That would be a matter of proof if it has a technical name.

Mr. Green: We take the position we will show that and make our exceptions and save our record.

The Court: Very well, but I think this is competent as to how much it is worth that is another question.

Mr. Swacker: And also object if there can be any ambiguity of the name of a thing, under the American Tie & Timber case, this Court would be ousted of jurisdiction in this case altogether, and the matter could be decided by the Interstate Commerce Commission, solely.

The Court: Very well, you can raise that if the evidence—after the evidence is in.

Mr. Swacker: And I object to its admission at this time, on the ground that it is irrelevant, incompetent and immaterial, and not binding on the Gulf Refining Company, it nowhere being shown that the Gulf Refining Company was cognizant or bound by what Chestnut and Smith might do in the shipping orders, and not shown the circumstances surrounding it are substantially similar to the circumstances surrounding the Gypsy Oil Company, and not shown material shipped is the same commodity with respect to the blend, the degree of blend, and for the further reason, that it is not shown where the shipments referred to by the witness were from or where they were moving to, as to whether or not these are rates on unrefined naphtha between the shipping point or whether these are rates on unrefined naphtha between the shipping point of the Chestnut & Smith shipments, and the destination which we contend is the controlling matter as to what the commodity shall be designated as for shipping purposes, the witness having testified to the customs in respect to the shipment,—the witness—

By Mr. Diggs: If your Honor please we want to object as incompetent to prove a custom or usage by taking a particular instance from particular people. That is not the way of proving a custom or usage and further that there is no proof that such custom or usage has been brought to the knowledge of the Gulf Refining Company.

By the Court: I am just letting him testify as to a practice.

By Mr. Swacker: Of somebody else.

By the Court: Practiced in the course of business.

By Mr. Diggs: Then do I understand the Court to exclude that part of it.

By the Court: I have not permitted him to state what people told him.

By Mr. Diggs: What other people did.

By the Court: It is the conduct of the business.

By Mr. Diggs: I raise the proposition it is not the way to prove the custom or usage by showing what certain individuals engaged in the same business did.

By the Court: Well they prove the name, the practice as to how it is used. Your objection is overruled and you will be allowed your exception Mr. Diggs.

By Mr. Diggs: Exception.

Q. How did they bill that out? A. Gasoline.

Q. Now do you know D. W. Franchot? A. Yes, sir.

Q. Are they at Kiefer? A. Yes, sir.

Q. What do they do? A. Make casinghead gasoline.

Q. And do they blend it and ship it? A. Yes, sir.

Q. And have you up to the time during the time that you have been inspector in Oklahoma, have you examined and inspected those tank cars? A. Yes, sir.

Q. Have you examined and inspected the blended, where they blended with naphtha? A. Yes, sir.

Q. Where the naphtha is blended with casinghead gasoline? A. Yes, sir.

Q. And how do they ship their product? A. As gasoline.

By Mr. Swacker: Same objection and exception.

By the Court: Same *objection* and exception.

Q. Now let me ask you did these people ship this product as gasoline after December 2, 1916?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial, the transaction being between third persons and having no connection with the Gulf Re-

fining Company and not shown to have been brought to the knowledge of the Gulf Refining Company and not being the best evidence of how they shipped and under what condition it was shipped.

By the Court: Well now if you are going to go on that of course that will force them to send down there and get their railroad records. Now you have your point on the law. That allows you your exception. I will sustain the objection and require them to send after them.

By Mr. Diggs: If the Court please I am not putting the words "best" in their strike out the word best and I will say hearsay.

By the Court: Very well.

Q. Now after December 2, 1916, you inspected that plant?

A. Yes, sir.

Q. Of the Franchot? A. Yes, sir.

Q. And were they shipping this commodity as gasoline after December 2, 1916?

A. They billed it that way, yes, sir.

Q. That is what I mean. They billed it as gasoline?

A. Yes, sir.

By Mr. Diggs: Same objection and exception.

By the Court: As to the other yes. I can see the philosophy, if a rate is ambiguous I can see the philosophy if there is ambiguity about the rate where whether that should be an honest difference and not only should a criminal action be based on it but a civil. That rule in cases like that they are first referred to the Interstate Commerce Commission for determination. Go ahead.

By Mr. Diggs: Let me suggest this idea to the Court: This character of evidence is introduced now for the purpose of showing we are guilty of a crime. Suppose we would transport this thing and we are charged with shipping this same stuff north or shipping it south by another name *became* somebody else didn't use the name described in the tariff they could switch round and make what they term a crime in one place and the right name to ship it in another direction. That seems to be the principal hardship.

Mr. Swacker: Suppose there was no ambiguity in the name?

The Court: Well, we will see if there is ambiguity. I am letting it in on the theory of the government now. Proceed with the evidence.

Q. Now Mr. League, have you inspected, during the course

of your investigations, in Oklahoma, the Totem Gasoline Company's plant at Jenks? No, sir.

Mr. Swacker: We made an admission on the Totem this morning subject to objection.

Q. Did you examine any plants at Jenks? Do you know where Jenks is? Yes, sir.

Q. Now, there is the Totem plant, the Oil State Gasoline Company, the Ajax Gasoline Company, the Tribes Gasoline Company and the Eagle. Do you remember any of those names? A. Yes, sir. The Ajax, Tribes and Eagle.

Q. You have examined the Ajax, Tribes and Eagle?

A. Yes, sir.

Q. Now as to the Tribes Gasoline Company, did you make any inspection of it—of the manner in which it makes its commodity?

Mr. Swacker: We will make this admission as to any of the plants that the witness may name that you contend that that is a fact, that the witness, if you ask him those questions, will testify the same, and that subject to our objection and exception.

Mr. Chambers: That the Tribes gasoline plant, the Eagle gasoline plant, the Oil State Gasoline plant—it is admitted that they, prior to December 2, 1916, and after December 2, 1916, shipped their commodity as gasoline.

The Court: That he would testify that. That is the blended commodity of naphtha and what he calls raw castinghead gasoline, that they shipped it.

Mr. Chambers: Up to May, 1919?

The Court: During the period covered, they shipped it as gasoline subject to the exceptions of incompetency and irrelevancy and hearsay, and things like that. That he would testify that as to the commodity, the blended commodity as naphtha and—

Mr. Chambers: Up to May 19—

The Court: On the theory that they shipped it as gasoline.

Mr. Swacker: Subject to our exceptions and objections.

The Court: Yes, sir, subject to the objection of competency and relevancy.

Mr. Green: And all the objections made before.

The Court: Yes, sir, and hearsay.

Mr. Chambers: The Mid-Co Gasoline Company, Consumers Gasoline Company—rather, the Consumers

Refining Company, Victor Gasoline Company, Tidal Gasoline Company, Jefferson Gasoline Company, Ohio Cities Gasoline Company, Gilliland Gasoline Company?

Mr. Swacker: Have you been there and inspected them?

A. All but the Gilliland.

Mr. Swacker: And you have inspected them likewise under the same circumstances?

A. Yes, sir.

Q. And during the time prior to December 2nd and after December 2nd, 1916, up to May 2nd, 1919, as far as the inspection,—

A. Yes, sir.

Mr. Swacker: We admit the testimony would be the same with reference to this as to the other, with the same objections.

The Court: All right.

Mr. Green: I would like to get the Court to instruct the stenographer to make the memorandum that all of the objections that were granted, reserved by the defendant to the first plant about which he testified, applied to all of these others, all of the exceptions.

The Court: All objections and exceptions apply to every one except that it was not the best evidence.

Mr. Green: Yes, sir.

*Cross Examination by Mr. Swacker.*

Q. Mr. League, have you with you a copy of the transportation regulations? A. Not in my immediate possession.

The Court: Now, it is 12 o'clock—go ahead, ask him.

Mr. Swacker: Is there any objection?

Mr. Chambers: Is it something we have got? We will give it to you if we have.

Q. Is this a copy of those regulations? A. Yes, sir.

Q. Will you look at it, Rule 1712, and read it?

Mr. Chambers: Is that one of the tariffs?

Mr. Swacker: No, sir. That is the transportation regulations that he has been testifying about he enforced.

Mr. Chambers: I thought he testified about other people shipping.

Mr. Swacker: He testified about his duties, and he enforced these rules.

A. This one that was in effect on September 1st, 1918, did not become effective until that date.

Q. Will you look at that rule and state, if you can, if there was any change in that rule, in 1712, at least in substance, as it appears there and previous issues?

Mr. Chambers: I object as not the best evidence.

By Mr. Swacker: If you will not concede that—

By Mr. Chambers: I don't know.

By the Court: You can find out what the rule is, you can find out what can be stipulated about that.

By Mr. Swacker: Mr. Gann says he will concede—

By Mr. Gann: I know what the rule is Mr. Chambers does not. My knowledge is not binding on him.

By Mr. Chambers: You are the man that knows, if you say it is alright, it is alright.

By Mr. Gann: The rule is alright.

Q. Will you read that rule please sir?

A. Do you want all of it?

Q. Let me see if it can be shortened?

By the Court: Now we will take a recess gentlemen of the jury and you will be permitted to separate under the usual instruction of the Court until one forty-five P. M. Court will now take a recess until one forty-five P. M.

(Whereupon Court took a recess until one forty-five P. M.)

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#### AFTERNOON SESSION.

1:45 o'clock P. M.

Whereupon Court met pursuant to adjournment. The Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the Clerk and all found to be present, and counsel for the plaintiff and counsel for the defendant, having announced they were ready to proceed with the trial of this case, the following proceedings were had, to-wit:

E. J. LEAGUE, recalled as a witness.

*Cross Examination (Resumed) by Mr. Swacker.*

Q. Mr. League, did you say it is your duty to see that all the safe transportation rules are enforced with respect to the shipment of the commodities we have been talking about?

A. Yes, sir.

Q. Now, I ask you to read the first paragraph from rule 1712?

A. This is a later edition. May I read from my own copy that was in effect at that time?

Q. To which time do you refer to? A. July, 1916.

Q. If there is any change in that item—I would like for you to read the rule as it stood from December 2, 1916, until this set of rules became effective July 15, 1918. I believe it became effective at a later date, did it not? The set of rules which you identified before adjournment were revised and issued as of July 15, 1918, did they not?

A. Yes, sir.

Q. And they became effective at a subsequent date to July 15, 1918, did they not? A. Yes, sir.

Q. What date? A. September 1, 1918.

Q. And those rules remained in force until May, 1919, did they?

A. Yes, sir.

Q. Now I would like for you to read the rules which were in force from December 2nd, 1916, which you have been testifying to and the rules that became effective thereafter so far as there may be any change in that paragraph.

A. Paragraph 1712, "All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carriers classification and tariff governing."

Q. Now were there any differences in the rules, did you read the rule before 1918? A. Yes, sir.

Q. I was reading it here.

A. I don't think there was any change.

Q. Now look at rule 1868?

A. There is no such rule.

Q. 1873, I should have said: A. Yes, sir.

Q. Will you read the first paragraph of that rule?

A. "The revenue or other way bill prepared from the shipping order, and transfer billing to connecting carrier for dangerous articles in list, paragraph 1807 and for other articles not in the list, but properly offered for shipment as dangerous articles, must properly describe these articles by classification or tariff names, and state for less than carload shipments the color of label applied. For car load shipments they must show the kind of placards applied. The shipper's certificate must be in possession of the initial carrier when these endorsements are made on original billing."

Q. That is the original rule before 1918, isn't it?

A. Yes, sir.

Q. Now, will you look at the rule after 1918, and see what, if anything, was added?

Mr. Swacker: I think we might exclude that part that was added, it seems irrelevant.

Mr. Chambers: You can read it in if you want to.

Mr. Swacker: I will read it, but I am not going to offer it in evidence.

Any body can see it is irrelevant. For carload shipments they must show the kind of placards applied, and when the *lading* is not dangerous, but is properly described by one of the doubtful names, distinguished by an asterisk in the list, paragraph 1807, the billing for the car must be endorsed, "No placard required."

Q. That is the only change in that rule, is that right?

A. Yes, sir.

Q. There is another rule, is there, that indicates the character of placard that must be applied upon cars containing either raw casinghead gasoline or casinghead blended with naphtha?

A. Yes, sir.

Q. What rule is that?

A. Any particular placard that you refer to?

Q. Well yes—is there any placard required which is applicable to raw casinghead or casinghead blended with naphtha only, and which is prohibited to be used on any other commodity? A. Yes, sir.

Q. What is that placard? A. Dome placard.

Q. Now what are the words on that placard?

A. "Caution, do not remove this dome cover while interior pressure exists.

By the Court: Read that rule requiring that?

A. When the—

By Mr. Chambers: Which one are you reading from now 1914 or 1918?

A. 1914.

By the Court: Go ahead.

A. Reading: "When the condensate, blended or unblended, with other products, has a vapor tension as above defined, not exceeding ten pounds per square inch, and is shipped as "Gasoline" in an ordinary tank car, sixty pound test classed defined in Master Car Builder's association specification for tank cars, the safety valves of such car must be set to

operate at twenty-five pounds per square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to the samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casing-head gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than January 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees Farhenheit."

Q. Was there any substantial change in that rule so far as the placarding was concerned by the 1918 rule? A. No, sir.

Q. Now in the copy of the rule that you have there will you say that first part that you read there when it is shipped as gasoline, that is the way it reads "when it is shipped as gasoline?" A. "And is shipped as gasoline?"

Q. Yes, "and is not the word gasoline" in quotation marks there? A. Yes, sir.

Q. You understand those quotation marks in the sense it is used in a sense, not the correct name but a name that is used—

By Mr. Chambers: We object to that as incompetent.

By the Court: What do you understand by the quotation marks. What are they put there for if you know, if you know why they are put there.

A. My thought that it was put in the quotation marks for the reason that the condensate from the natural gas sometimes is described as liquefied petroleum gas.

Q. Did you find anything else in the rules any other commodity which is described by the name in quotation marks than the one instance in all these rules? A. I do not recall.

Q. Now these rules deal with thousands of articles do they not? A. Yes, sir.

Q. But in a great many and in every instance so far as

you know they use the appropriate name without quotation marks, isn't that true? A. As near as I can now recall.

Q. Now you said on your direct examination that you call this commodity, gasoline, I want to ask if you do not make a mental reservation to yourself in doing that that it is not really gasoline but is commonly called that among those with whom you do business? A. No, sir.

Q. Don't you practically put those quotation marks in your mind when you call that gasoline? A. No, sir.

By Mr. Chambers: We object to that, I don't know what he means by that.

By Mr. Swacker: You don't, I think he does. He says he does, anyhow.

Q. Now will you look at the rule you have just read from after September 1, 1918, and read the paragraph beginning with "liquid condensate" and specify the change in the rule in that respect?

A. May I have your copy for that?

(Counsel hand paper to witness.)

A. "When the liquid condensate alone or blended with other petroleum products has a vapor pressure not exceeding ten pounds per square inch it must be described and shipped as gasoline, casinghead gasoline or casinghead naphtha."

By Mr. Swacker: The rest of it is the same "in tank cars of a certain description."

A. It must be shipped in metal barrels or drums complying with specification No. 5 or in ordinary tank cars sixty pounds test flash equipped with mechanical arrangement for closing dome covers etc.

Q. Now, will you look at the rule, I think it is number 1807, Rule 1807, and look under gasoline and read the note at the right hand end opposite that item?

A. Gasoline made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed ten pounds per square inch.

Q. The rule says it may be so described. Will you see if you can find any other rules where the article must be described as a certain thing, or can you say from your recollection that there are such other rules?

Mr. Chambers: We object to that as incompetent.

The Court: Well, he can ask if he knows of any other rule on it.

Mr. Chambers: I do not think it is material at all,

or competent. I take it that the Court was going to pass on the construction he was going to place.

The Court: Yes, but I want to find out if there was any other rule that pertained to how gasoline, what must be defined as gasoline in the shipment. I will permit him to direct his attention if he knows.

Q. Look right down the line there next below gasoline, —*nitro telulose*, read what the note requires in that case, what it says.

A. Two such items. Which do you want?

Q. *Nitro telulose* kept with solve. [Nitrocellulose, wet with solvent.]

Mr. Payne: I object. I don't see how that can possibly have any bearing on the case.

The Court: I think not. I sustain the objection. What is the object of that?

Mr. Swacker: The object is to show the Commerce Commission definitely uses language meaning what they say. According to what they mean, saying "may" as to one and "must" as to another.

The Court: I will not let you introduce that in evidence. In the argument you may refer to that and call that to the attention of the Court. The Court will construe that.

Mr. Swacker: The paper is in evidence, the only point is getting out the salient features to attract the Court's attention.

The Court: I have no objection to it being read for my benefit but not to go into the record. The stenographer will not take this down, and the jury will not consider it. You may read it now, but it is not to be taken down.

(Whereupon the witness read the paragraph mentioned.)

Q. Now, are there any number of other rules which are worded must.

A. There are.

The Court: Now, you will notice the word must applies to safety and the word may apply to designation may and might be, there might be a reason why they applied that to safety, they would consider it mandatory, a mandatory term. May means must in a great many statutes, while may is used as a permissive term, a great many statutes use it to mean must.

Mr. Swacker: Yes, sir, and we again call the attention to the fact that throughout these rules, that they don't

properly constitute in any sense of the tariffs or the rate regulations, and are only transportation rules, and we had the witness read the rule 1712 which imposes on these inspectors the duty of seeing the correct tariff designation is used. I intended to interrogate him with reference to the discharge of his duties in that regard.

Q. Now you said it was your duty to enforce these rules during the period between December 1916, and May 1918 on the shipments made by the Gypsy Company from Kiefer, Jenks and Drumright? A. Yes, sir.

Q. You saw the shipping orders did you that were tendered the carrier to cover the shipments that were made?

A. Yes, sir.

A. And did they invariably bear the stamp required by the rule you read to the extent that the dome cover placard had been applied which was to be applied on cars containing raw casinghead or casinghead blended with naphtha?

By Mr. Payne: I object to emphasizing the words raw casinghead and would like to ask the witness if the word "raw" casinghead is used anywhere in those regulations?

A. No, sir.

Q. You understood what I meant by raw casinghead did you not? A. Yes, sir.

Q. Where did you learn what that means, what the name raw casinghead applies to, I say where did you learn what it applies to? A. In my inspection work of the plant.

Q. Is it a name commonly applied to distinguish casinghead that has not been blended or casinghead that has been blended? A. Yes, sir.

Q. That is why and how you understood the name when it was used in the question? A. Yes, sir.

Q. Now will you answer the question please?

By the Court: Read the question.

(Question read by the Reporter: They object to

By the Court: They object to the word "raw" I will have you confine your language to the rule.

Q. Well the rule is rather lengthly; when the blended condensate of casing gas etc.

By Mr. Payne: May I suggest that they use the term casinghead gasoline alone or blended with other products?

By Mr. Swacker: Very well I will let the question be corrected to that extent. Do you understand the question?

A. Yes, sir.

Q. What is your answer to it?

A. All the shipping orders bore that stamp.

Q. So that any time you picked up a shipping order covering a car going from Kiefer, Jenks or Drumright to Port Arthur bearing that stamp you would know that car had casing-head in it, is that correct? A. Yes, sir.

Q. Did every car that you ever saw shipped from those places bear the placard you described required to be affixed to that traffic?

By Mr. Chambers: We admitted that some time ago.

By Mr. Swacker: You admitted it was a fact it bore it but I want to show as a fact he knew it.

A. Every loaded tank car did.

Q. You would not have let it go forward unless it did have that, is that correct? A. Yes, sir.

By the Court: Now who put those placards on there, whose duty was it to put them on there?

A. The shipper.

By the Court: Then they were turned over to the railroad company.

A. Yes, sir.

By the Court: And the agent of the railroad company who way-bills these shipments is governed by these same regulations is he not?

A. Yes, sir.

By the Court: And he is required to affix on his way-bill under the rule that you read, a like stamp indicating this dome covered placard was attached to the cars, was not that true?

A. Yes, sir.

Q. Now under those circumstances when such a waybill would go in the audit office it would indicate that there was casinghead in that car?

By Mr. Payne: I object, he cannot say what would happen in the auditor's office unless he shows he *know* what was in the office.

By the Court: Yes, I sustain the objection.

By Mr. Swacker: I withdraw the question.

Q. Now have you Mr. League in your experience found instances with respect to other commodities in which there was a tariff naming a rate governing the commodity differing from the name used in the rules of the safety transportation regulations applicable to the commodities?

By Mr. Payne: I object to that—

By the Court: I don't think he has shown himself qualified to answer that.

Q. In the course of your duties as an inspector do you know of any controversy arising between yourself and Mr. Donovan the manager of the Gypsy Oil Company over an appropriate description to be used in shipping this product?

A. No, sir.

Q. Do you know of any controversy having arisen between Mr. Donovan and the inspector named Ennis?

By the Court: Of your own knowledge, not from hearsay.

A. No, sir.

Q. Do you know of a controversy between yourself and this inspector Ennis in respect to the mode of description?

A. Yes, sir.

Q. Will you state what that controversy was?

A. There was an exchange of ideas between—

By Mr. Payne: I anticipate that this, your Honor, is in reference to a conclusion of law and I think that Mr. Swacker should bring out the nature of the controversy first.

By the Court: Yes, sir.

By Mr. Swacker: My previous question indicated the nature of the controversy. A controversy as to the proper description to be used on the shipping orders.

By Mr. Payne: I think that is triable by the regulations themselves, not what this man or that man or the other man may think about it.

By the Court: On what theory do you claim that is admissible.

By Mr. Swacker: We desire to show that such a controversy arose and that it was submitted to the superior officer of both of these inspectors, who ruled in favor of the interpretation given by the Gypsy Company, and overruled the other inspectors. Now we don't say that that is controlling in any sense of determining what the commodity is, but we do say in the light of the evidence that has already been admitted as to the custom of calling the thing that it is relevant on that score.

By the Court: I sustain the objection.

By Mr. Swacker: Particularly on the question of intent. We say that if there was no concealment as has been shown by the shipping order; this witness has testi-

fied that it was evidenced always by the shipping orders that the commodity was casinghead, that it certainly negatives any intent to obtain an improper rate.

The Court: This is not the way to prove it. You want to prove by him that he or any officer of these bureaus advised that this was the proper way to bill it, I will let you prove that.

Mr. Swacker: I was getting to that. I was asking him what the controversy was.

The Court: No, that is not it. It don't make any difference whether they had a controversy or not, if there was any officer whose duty it was to advise them told them that was the way to bill it, I will let you prove that.

Q. Did you ever have any instructions from Colonel Dunn, the head of the Bureau of Explosives, to any question as to how this commodity should be billed?

The Court: No, not that, but what he told these people. It doesn't matter whether they had any instructions or not, but if they told them that was the way to bill it, I will let you show it. I mean, if any of these inspectors advised the Gypsy that that was the proper way to bill it, I will let you prove that.

Mr. Swacker: That is not exactly what happened. What happened was this, that this inspector would not be giving instructions to the Gypsy but he communicated to his chief, and his chief gave him instructions.

The Court: Well, I will exclude that.

Mr. Swacker: Exceptions, then.

The Court: That is not a matter for the jury. That is a matter for me.

Q. Mr. League, you are employed by the railroad companies are you not? A. By the Bureau of Explosives.

Q. And they are an agency of the railroad company, are they not?

A. I don't know just exactly their present status now.

Q. During the time we are talking about, except during the period of Federal control, was it not then an agency of the American Railway Association?

A. That is my understanding.

Q. And the same—and the American Railroad Association is an association composed of practically all of the railroads in the country? A. Yes, sir.

Q. And this inspection service was performed by the Bureau of Explosives as an agency for the railroad companies in that respect? A. Yes, sir.

Q. During the period of Federal control, was this agency continued by the United States government while it was operating the roads? A. That is my understanding.

Q. And who is at the head of this bureau?

A. Our chief inspector is Colonel D. W. Dunn.

Q. He is an United States Army officer? A. I think so.

Q. Do you know any one named Topping connected with that Bureau? A. Yes, sir.

Q. Who is he? A. Chief Assistant Inspector.

Q. I will ask you to look at the paper I am now handing you, and ask you if you can identify that as Mr. Topping's signature? A. Yes, sir.

Mr. Swacker: I would like to have that marked for identification. I don't think it is admissible at this time.

Q. Did you attend a meeting of casinghead producers in the summer of 1918 or the spring of 1918, between the casinghead producers and the Bureau of Explosives, a conference?

A. On May 11, 1918.

Q. Here in Tulsa? A. Yes, sir.

Q. I will ask you if you can state whether there was a large meeting of casinghead producers present at that meeting? A. Yes, sir.

Q. I will ask if it involved a large portion of the producers of casinghead in this vicinity, or a large portion of the producers in this vicinity? A. Yes, sir.

Q. Do you recall whether Mr. Donovan, the Manager of the Gypsy Gasoline plant, was at that meeting?

A. Yes, sir.

Q. Do you recall whether Mr. C. B. Ellis was at that meeting? A. Yes, sir.

Q. Do you recall whether any representatives of The Texas Company was at that meeting? A. I don't recall.

Q. Do you recall whether Mr. Jarvis was there?

A. I don't know.

Q. Who was there on behalf of the Bureau?

A. Of explosives?

Q. Yes? A. Mr. W. S. Topping, C. P. Beistle.

Q. Who is Mr. Bisel, connected with the Bureau?

A. The chief chemist

Q. Was Colonel Dunn there? A. No, sir.

Q. Can you tell me what the purpose of that meeting was?

A. A conference with the producers of casinghead gasoline.

Q. Well, with respect to the rules proposed to be recommended by the Bureau to the Interstate Commerce Commission? A. Yes, sir.

Q. I will ask you if you recall a discussion of that portion of rule 1824-K you read a while ago in the first edition reading "and is shipped as gasoline," and in the second rule reading "must be described as gasoline, casinghead gasoline or casinghead naphtha?"

Mr. Payne: I object, your Honor. I don't think that is legal.

The Court: I don't see how that would be competent.

Mr. Swacker: They have attempted to show by this witness what was common terminology.

The Court: No, just the practice of the companies, how they use it.

Q. Was there any discussion in that meeting—

Mr. Payne: We object to any discussion in the meeting. It was in reference to proposing an amended rule. Now, the amended rules themselves are the law and not what the discussion was in reference to putting it in. There may have been all kinds of opinions expressed.

Mr. Swacker: I am not asking this witness to testify to what the law was. I am asking him to testify the subject of discussion there in so far as it had anything to do with the name of this commodity.

The Court: I will permit you to show they discussed it but not what they said.

Mr. Swacker: Very well.

Q. Was there a discussion there of the name properly to be applied to this commodity? A. Yes, sir.

Mr. Swacker: I do not want to transgress your honor's ruling in that respect, I ask this question—

Q. Was objection made there that there was a divergence in nomenclature of this particular article as between the tariffs and the safety transportation rules—

Mr. Payne: I object to what further transpired at the meeting unless we are going to take up the entire meeting and the government to show things favorable to its side.

The Court: I permitted them to state what was discussed, but not what was said. That is a collateral matter and hearsay, would have to unfold before the jury everything to see the merit.

Mr. Swacker: I think that is correct. The only thing—I only think I am entitled to it, because the wit-

ness on direct examination went into this character of testimony as to what people called it.

Mr. Diggs: I suggest that the only theory on which the evidence of this witness was admitted this morning was for the purpose of showing how the people in this vicinity names this article—

The Court: No, how the trade, body of men.

Mr. Diggs: We have shown on these—we have shown all these producers or a majority were present or together discussing the proper name to apply to this article.

The Court: No, I will not permit that. I sustain the objection of the government.

Mr. Swacker: I except.

Mr. Payne: I don't object if you let the government go into it, if you will do that.

The Court: No, the government cannot go into it, and I will not permit him to state what he heard and discussed—what he heard them discuss there.

Mr. Swacker: I except.

Q. Now, Mr. League, in your experience in connection with inspecting this commodity throughout this territory, have you observed whether there is any uniformity in either the character or quantity of materials used in blending or whether there is great diversity?

A. There is great diversity.

Q. Both in the character of materials used to blend with casinghead and the quantity used, is that correct?

A. Yes, sir.

Q. What materials are used, if any, other than naphtha, using naphtha in its specific sense?

A. Kerosene, gas oil, fuel oil, crude and so-called distillates.

Q. Distillates of each of these, kerosene distillates and gas oil and distillates of other lower grade oils?

A. Yes, sir.

Q. Do you know, in a general way, what are the properties of crude oils denominated naphtha fractions? A. No, sir.

Q. Do you know what are the elements of which naphtha is composed? A. No, sir.

Q. Do you know anything concerning the usability of the various blends that you have referred to in their state when blended? A. And used as what?

Q. Well, for example, for gasoline stoves?

A. Yes, sir, I have burned those blends in stoves.

Q. Have you burned all the blends you have described in stoves?

A. I don't recall having burned the crude oil blend.

Q. You have burnt all other blends in stoves?

A. I think so.

Q. Are you familiar with the law of Oklahoma covering the inspection of gasoline? A. No, sir.

Q. When you burnt these blends were you examining or have you done that as an ordinary practice in your own home?

A. Neither.

Q. Neither? What was the circumstances in which you did burn some of the stuff or samples of each of them.

A. In making the vapor tension tests such as we inspectors were required to make we had to have hot water and at these outlying loading racks they sometimes erect a crude stove and burn different blends of stuff they ship. They do that to produce the heat to get their hot water.

Q. Do you know whether they use the blend they ship or instead of that of what is commonly known as drip?

A. They use the blend that they ship.

Q. Do you know whether the Gypsy Oil Company uses the blend it shipped for that purpose?

A. They use it to produce the heat but not in the stove.

Q. In a stove—not in a stove? A. No, sir.

Q. Do you know the specific quantity of blending material used in the plant that you have seen not used in a stove.

A. I can recall approximately perhaps.

Q. Take a particular instance and name some plant there, some time?

By Mr. Payne: I object, I don't see the relevancy of all this.

By the Court: Let's see what it is.

By Mr. Payne: I have no particular objection but it takes up time.

A. There is a certain plant in the Drumright district that uses the blend with fuel oil, said to be a fifty-fifty plant.

Q. Fifty-fifty plant? A. Yes, sir.

Q. You was told that was what the blend was?

A. Yes, sir.

Q. And that was the source of your information?

A. Yes, sir.

Q. Do you know how they perform the distillation tests of the gasoline? A. I don't know how it was done.

Q. Have you ever performed the distillation test of any material shipped by the Gypsy Oil Company? A. No, sir.

Q. Have you ever performed a distillation test of any unblended casinghead or seen one performed?

A. I do not recall that I have.

Q. Now, do you know where the unblended casinghead such as moved in this territory comes through here or goes through here to refineries?

By the Court: Of your own knowledge and experience.

Q. From your observations of the billing that you may have inspected? A. To the refinery?

Q. To the refiners? A. As far as I recall.

Q. Do you know why it goes to the refiners? A. Yes, sir.

Q. What is the reason it goes to refiners?

A. For further blending with some lower product.

Q. For what purpose? A. Equalizing the gravity.

Q. And why is that desirable to be done?

A. I know of no other reason than to increase the output.

Q. Well, isn't it to make it a finished gasoline?

A. I wouldn't say so.

Mr. Payne: I object, your honor. We have no objection to his testimony.

Mr. Swacker: Then why keep objecting and interrupting, if you don't object.

Mr. Payne: We don't refer to any specific case.

Q. Do you know whether a producer of raw—I mean unblended casinghead in the State of Oklahoma is permitted to sell that commodity in the state in which it is shipped when unblended as gasoline in this state? A. I don't know, sir.

Q. Then you don't know whether refiners may be doing that to comply with the law instead to enable them to sell this product as gasoline? A. I don't know, sir.

Q. Then you are just hazarding an opinion, when you say that you think it is to increase production? A. Yes, sir.

Q. And it has very substantially in the last few years increased the production of gasoline in the aggregate, hasn't it? A. Yes, sir.

Q. Two or three hundred million barrels a year, has it not? A. I have no idea.

Q. Well, now do you know of any other state, or of any state, I should say, which prohibits the sale of this unblended casinghead as gasoline?

A. I know of no state that does.

Q. You know of no state that does so? A. No, sir.

Q. In your inspections of the shipments of the Gypsy Oil Company, did Mr. Donovan always accord you any information you desired concerning the product, or did he, on the

contrary, endeavor to conceal anything in relation to it from you?

Mr. Payne: I object to that.

Mr. Swacker: I think I meant it led to show that anything he asked for, he told him.

Mr. Payne: No, that has nothing to do with the rate.

The Court: Yes. Objection sustained. You objected when they offered to prove that.

Mr. Swacker: Yes, that is right.

Q. What was the average gravity that you observed on the unblended casinghead shipped by the Gypsy Company from these three points that had been mentioned during the time mentioned? A. The unblended?

Q. Yes.

A. I do not recall inspecting any shipments of unblended casinghead gasoline that was shipped by the Gypsy Company from these plants.

Q. Were all the shipments that you inspected, from Jenks, blended?

Mr. Payne: I object, because the witness will have to remember the specific shipment.

The Court: If he knows that—if the inspections that he made there were blended—if he knows that to be a fact, he may state that. Not give his opinion and speculate on it.

Q. (Question read by the reporter.)

A. I do not now recall making any inspection of cars shipped from Jenks by the Gypsy Company.

Q. Do you recall inspecting any cars from Jenks?

A. Shipped by the Gypsy Company?

Q. Shipped by the Gypsy Company? A. No, sir.

Q. And none of your testimony relates to any cars shipped from Jenks by the Gypsy Oil Company is that correct?

A. That is correct.

By the Court: I don't think he named the Gypsy Oil Company this morning.

By Mr. Swacker: I am asking him about inspecting all of these plants.

By the Court: I noticed he did not name the Gypsy Oil Company this morning.

Q. What was the average gravity you observed on the blended material shipped by the Gypsy Company which you inspected, about what was it? A. About 72 or 73.

Q. Well, would that not be about the minimum?

A. I have seen cars with a lower gravity than that.

Q. And in particular cold weather and in extraordinary conditions?

A. Yes, sir, extraordinary conditions I have seen it average about 72 and 73.

Q. Average 72 or 73? A. Yes, sir.

Q. Now, you said in response to one question—that you have heard generally applied to this commodity, the name gasoline, isn't it a fact that you yourself expressly differentiate this unblended casinghead whenever it runs above ten pounds vapor pressure by calling it something else?

A. Yes, sir.

Q. What do you call it? A. Liquefied petroleum gas.

Q. Now, what is the practice in this regard around the plants; do they call that liquefied petroleum gas in speaking generally do they call that gasoline also or do they call it liquefied petroleum gas?

A. My observation has been that they call it gasoline.

Q. Then they make no such distinction as the tariff and regulations or the safety transportation regulations here make in denominating that by a particular name do they?

A. No, sir.

Q. They commonly call it gasoline? A. Yes, sir.

Q. Now, in answer to the last question you said that though these rules required when the commodity is over ten pounds vapor tension that it shall be called liquefied petroleum gas; that those with whom you came into contact in your business commonly called that gasoline; also, that is correct, isn't it? A. No, sir.

Q. I don't mean with respect to shipping but just in ordinary every day mention of it?

A. Among the railroad men and inspectors?

Q. I am not asking about the railroad men and inspectors, I am asking about the producers.

A. I didn't understand you to say that.

Q. You come in contact with producers more than you do railroad men, don't you? A. No, sir.

Q. Well, your duty is to be around among these plants with a good deal of frequency? A. Yes, sir.

Q. Now, referring to it in the vicinity of these plants, I understood you to say a few moments ago that notwithstanding the description required by these rules of liquefied petroleum gas when the vapor tension exceeded ten pounds that no distinction was made by the producer but they called that gasoline. A. Yes, sir.

Q. So far as your contact with it indicated?

A. Yes, sir.

Q. Now then that name, liquefied petroleum gas is a very proper name of the commodity? A. I should think so.

Q. And might with entire accuracy be applied to the commodity even though the vapor tension did not exceed ten pounds is that true? A. Aside from the shipping.

Q. I am speaking—I am not speaking of the shipping regulations—that is a very accurate denomination of the commodity? A. Yes, sir.

Q. Do you know other names used in reference to it?

A. Liquefied petroleum gas, casinghead gasoline are the only ones that I recall.

Q. Casinghead gas, have you heard that used very commonly?

A. Yes, sir, in the same sense that you would buy gas for an automobile.

Q. Just like people go up to a curb stand and call for gas instead of gasoline?

A. Yes, I understood it to be an abbreviation of the word gasoline.

Q. And you just assumed that to be an abbreviation of the word gasoline haven't you?

A. Well, I use it that way myself.

Q. Did you ever hear anybody else say that was the way they used it?

A. The manner in which they used it indicated they used it as an abbreviation.

Q. What is the manner they used it in to indicate that.

A. In speaking of tank cars of casinghead gas—there is no such thing, it is gasoline.

Q. You say there is no such thing as casinghead gas?

A. I said tank cars of casinghead gas, never saw it.

Q. There is such a thing as casinghead gas? A. Yes, sir.

Q. Just because somebody referred to tank cars containing a liquid as casinghead gas it is your conception that they are abbreviating the word gasoline? A. Yes, sir.

Q. Now, have you heard the blended commodity called by other names than gasoline? A. Blended with what?

Q. Well, have you heard any of the blended commodities called by any other name than by gasoline? A. Yes, sir.

Q. Well, now what are some of those other names, if more than one? A. Unrefined naphtha.

Q. What other names have you heard? Haven't you heard naphtha blend?

A. Yes, sir, blended gasoline, kerosene blend.

Q. Gas oil blend? A. Yes, sir.

Q. And those are more commonly used than the name gasoline when there is any effort to speak with any degree of accuracy, are they not?

A. Among the producers, perhaps so.

Q. That is, gasoline wouldn't import anything to them as to what the product was unless they knew what it was blended with, isn't that true? And if they wanted to speak with accuracy, they would say naphtha blend or kerosene blend, or whatever they might have in mind, is that true?

A. Yes, sir.

Q. Now, you state that the commodity shipped by the Gypsy was practically of the same character as that shipped by the other people from whom you got your general information that it was called gasoline. And you say practically—when you say practically all the same, you embrace within that all this wide variety of blends, is that true?

A. Of the naphtha blends, yes.

Q. And they may run all the way from 10 to 15 per cent content of naphtha up to 95 per cent content of naphtha, is not that true? A. They might.

Q. Well, it is a fact that in this community the blending is done just according to what the particular producer has in mind to do, and according to the gas he is using?

A. Yes, sir.

Q. With the consequence those blends range from a 25 per cent up to about 95 per cent of material other than casing-head? A. I think those figures will be approximately correct.

Q. And those who blend up to 95 per cent of the other material commonly blend with the object of marketing the resulting blend in that case, do they not?

A. I have always thought so.

Q. Now, do you know the vapor tension of commercial gasoline as sold on the market?

A. Ordinary gasoline or casinghead gasoline?

Q. I mean what is commonly sold for consumption, such as you might get at a garage for a car, or you might buy for a gasoline stove?

A. I have run quite a number of vapor tension tests on such material.

Q. Well, what did you observe to be the vapor tension to be found in such material?

A. Ranging from one pound, about one pound to perhaps seven pounds per square inch.

Q. You found it up as high as seven pounds per square inch? A. Yes, sir.

Q. That was quite unusual, however, the seven pounds per square inch, was it not?

A. In the limited experience of testing that particular kind of gasoline, yes, sir.

Q. What kind of gasoline was that by the way?

A. Same as you describe in your question ordinarily found at *at* garage.

Q. The particular one that runs 7 pounds what was that particular kind of gasoline?

A. It was as I recall now a blend of ordinary refined gasoline, with casinghead gasoline.

Q. Do you know what proportions the blends were?

A. No, sir.

Q. Did you ever make any tests of any of the materials shipped for the Gypsy Oil Company with a view of determining whether it was refined or unrefined? A. No, sir.

Q. Would you know how to make such a test?

A. No, sir.

Q. How small a blend of casinghead gas do you think you would be able to detect a blend with distilled gasoline, straight-run gasoline? A. I don't know.

Q. You have no idea how low you would be able to judge that? A. No, sir.

*Further Direct Examination by Mr. Payne.*

Q. You speak of having heard of a blend of casinghead gasoline and naphtha being called unrefined naphtha, who do you know ever called it such? A. The Gypsy Oil Company.

Q. Anyone other than the Gypsy Oil Company?

A. And their employees.

Q. And their employees? A. Yes, sir.

Q. Never heard anybody else call them unrefined naphtha called it unrefined naphtha, except the Gypsy and its employees, is that correct?

A. And others who was speaking of that particular commodity shipped by them.

Q. But not speaking of their own? A. No, sir.

Q. Referring to the different blends of casinghead gasoline with naphtha and kerosene and other blends when it is blended with naphtha how is it usually shipped on the billing by the shipper? A. Gasoline.

By Mr. Swacker: I object, incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Swacker: I except.

Q. When it is blended with kerosine how is it usually shipped?

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Swacker: I except.

A. Gasoline.

Q. When it is blended with crude oil how is it usually shipped? A. Gasoline.

Q. Is it shipped—how about gas oil, did you say it was sometimes blended with gas oil? A. Yes, sir.

Q. How is it shipped then? A. Gasoline.

Q. Now coming back to the question of liquefied petroleum gas and gasoline did I understand you to say that generally speaking the casinghead gasoline producers would refer to their product as gasoline, is that correct?

A. In so far as—

Q. Assuming they did not know the vapor tension?

A. In so far as the relation between liquefied petroleum gas and gasoline, yes, sir.

Q. Would they or could they make any distinction between liquefied petroleum gas and gasoline until they had taken the vapor tension? A. Not accurately, no, sir.

Q. Not accurately. So that they would have to ascertain the vapor tension before they could determine as to whether it would be liquefied petroleum gas or gasoline for shipping purposes? A. Yes, sir.

Q. Now under the safety rules of the vapor tension is ten and one half pounds how would the product have to be shipped? A. Liquefied petroleum gas.

Q. Suppose it was ten pounds or under, how would it have to be shipped?

By Mr. Swacker: I object to that, I didn't bother with the other question but he is asking this witness to decide what your honor has got to instruct the jury.

Q. Well, how is it usually shipped?

By the Court: Yes, sir, how is it usually shipped?

Q. How is it usually shipped?

By the Court: I exclude all parts where he said ought to be shipped.

Q. Well, now, there is no *the* question about those rules using the word "must" in reference to liquefied petroleum gas, is that correct? A. Yes, sir.

Q. That is, under the rules, the rules say that when the vapor tension is over ten pounds, that it must be shipped as liquefied petroleum gas? A. Yes, sir.

Q. So far as your knowledge goes, has any one, other than the Gypsy Oil Company, shipped a blend of casinghead gasoline and naphtha by any other terms than liquefied petroleum gas and gasoline?

Mr. Swacker: I object to that, unless it is limited to Port Arthur, Texas, or some place where there are unrefined naphtha rates in force, as being incompetent, irrelevant and immaterial, and further, as not binding on the defendant, no connection being shown between defendant and these other parties.

The Court: I think you have gone far enough into that.

Q. You spoke of taking the vapor tension of ordinary gasoline. If I remember correctly, you said you found the vapor tension ranging from one to seven and one-half pounds, is that what you said?

A. I think seven pounds was the most.

Q. Seven pounds? A. Yes, sir.

Q. Now, a blend of casinghead gasoline and naphtha when shipped as gasoline, what is the range of the vapor tension from the shipments that you have tested?

A. Between six and ten pounds.

Q. Six to ten pounds? A. Yes, sir.

Q. You spoke of blends of casinghead gasoline and naphtha and casinghead gasoline and kerosene being shipped to refineries, such shipments as you have seen so shipped, how were they billed for transportation purposes?

A. As gasoline and unrefined naphtha.

Q. What refinaries have you seen shipments of such a blend as unrefined naphtha made to?

Mr. Swacker: I object to that, as being irrelevant, incompetent and immaterial, and another effort to show exactly the same thing excluded a couple of minutes ago, unless he shows the rates or tariff permitted and under the description of gasoline, it is irrelevant.

The Court: No, it is a negative. The question is have you seen it.

Q. Have you seen it?

Mr. Payne: The witness stated on Mr. Swacker's examination that the blends were shipped to refineries, and I am asking the witness how such shipments as were sent to the refineries were billed, I asked him that, and he answered billed as gasoline and unrefined naphtha, and I asked him to what refineries he had seen such shipments billed as unrefined naphtha.

A. To the Gulf Refining Company at Port Arthur, Texas.

Q. Have you seen the bill or shipping orders describing the shipment consisting of the blend of casinghead gasoline and naphtha to any other refinery as unrefined naphtha?

Mr. Swacker: I object as incompetent, irrelevant and immaterial and not being shown that the tariff or classifications permitted such shipment.

The Court: Objection overruled.

Mr. Swacker: I except.

A. No, sir.

Q. You spoke of dome placards, special dome placards. The fact that a car bore special dome placards would be an indication, would it not, that the contents of the car consisted of some blend of casinghead gasoline? A. Yes, sir.

Q. I asked you about blended only. I didn't intend to limit my question to blended casinghead gasoline. The placing of dome placards would indicate that the car contained either casinghead gasoline or a blend of casinghead gasoline and something else, would it not? A. Yes, sir.

Q. When you spoke of raw casinghead gasoline, just what did you mean? A. Unblended.

Q. Did you mean to intimate, by calling it raw casinghead gasoline that it was in a crude or unrefined state?

A. No, sir.

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial. He stated the source of his knowledge of the names as one in use among the people.

The Court: I will overrule the objection. You may have an exception.

Mr. Swacker: I object, on the further ground, that the witness is not shown to be qualified to express any opinion as to whether anything is refined or unrefined.

The Court: I will let him answer.

Mr. Swacker: Exception.

The Witness: What is the question?

Mr. Payne: As to whether raw casinghead gasoline was an indication that it was crude or unrefined.

The Court: No that is not the question.

Mr. Payne: Read the question.

The Court: You asked if he meant to indicate. That is not the question. You asked him if he meant to indicate.

(Question read by the reporter as follows: "Q. Did you mean to intimate, by calling it raw casinghead gasoline, that it was in a crude or unrefined state.")

By the Court: There is lots of difference by him saying he meant and what he said it was.

**Q.** I will ask you to look through this at random and point out some of the other specific names of commodities that are in quotation marks in that book?

**By Mr. Swacker:** Just in the interest of saving time I will object to him attempting to [ ] that because that is not an interstate commerce publication.

**By Mr. Payne:** Are these the books you questioned the witness.

**By Mr. Swacker:** Yes.

**By Mr. Payne:** Then we are entitled to show what quotation marks are in there.

**By Mr. Swacker:** I had him identify the rules promulgated by the Interstate Commerce Commission. Now he is asking him to testify from a publication published by the bureau of explosives.

**By the Court:** That don't go to the jury anyway that is a matter for the enlightenment of court and the court will permit him to do that.

**Q.** I just want to show they are quoted in there. Any specific names that are put in quotation marks?

**By the Court:** Suppose you let him look over this. You need not take the time now but you can recall him for that purpose.

**A.** I have several right at hand.

**By Mr. Swacker:** What rules have you reference to?

**A.** 1621.

**By Mr. Swacker:** Those are explosives and not part of the inflammable regulations at all, isn't that true.

**A.** Yes, sir.

**By Mr. Payne:** What difference does that make?

**By Mr. Swacker:** All the difference in the world.

**By the Court:** Now what is the wording in rule 1621. That is under quotation marks.

**A.** Small arms percussion caps. Percussion fuses, combination fuses.

**By Mr. Swacker:** Your honor please, that is just a rule of instructions with regard to marking them on the outside of each box.

**By the Court:** Any other.

**By Mr. Swacker:** That is an official publication and quote the rules and you can see what it relates to.

A. Paragraph 18 refers to 36 "striking anywhere matches."

By Mr. Swacker: That is just a good illustration in support of my argument.

By the Court: 1836, what is that.

A. "Strike anywhere matches."

By Mr. Swacker: You have an old edition?

A. I have an old one, yes, sir.

By the Court: Any other?

A. I do not recall.

By Mr. Payne: Did you put these in evidence (referring to papers)?

By Mr. Swacker: You put them in evidence yourself.

*By Mr. Payne.*

Q. Referring to page 47? A. Yes, sir.

By Mr. Payne: Oh, we will waive that point, that is all.

*Further Cross Examination by Mr. Swacker.*

Q. Your last question and answer was that you were asked if you meant to intimate that the commodity was unrefined in the use of raw casinghead, and you said no, did you mean in saying no it was refined?

A. I spoke of it as raw gasoline, I had no thought whether it was refined or unrefined.

By Mr. Swacker: Exactly.

Q. You have never known any raw casinghead gasoline that refined at the time of shipment did you?

By the Court: What do you mean?

By Mr. Chambers: I think that is objectionable, the witness is not qualified to testify to that.

By the Court: I think you have gone far enough.

Q. Have you ever known of any raw gasoline at the time referred to as being in an unrefined state or having been refined? A. I don't recall that I did.

Q. Now with regard to this placard is that required to be placed on a car that may have been shipped by a refiner where this is perhaps only five per cent casinghead gasoline content in the blend?

A. My interpretation of the rule they must.

Q. No matter what percentage of casinghead may be in gasoline shipped that it requires that record?

A. Yes, sir, yes.

Q. What to your knowledge is the common practice with respect to gasoline shipped by refiners having a small percentage of casinghead as to whether or not they use that placard or the ordinary red inflammable placard?

A. As far as my knowledge goes all refiners who put any casinghead blend at all use the dome placards.

Q. What refiner do you know who makes a blend of five per cent casinghead who put dome cover placards on them?

A. I know of no such refiner.

Q. You don't know of any such refiner? A. No, sir.

Q. And have you tested for vapor tension cars moving from a refinery cars having as low as five per cent content of casinghead? A. Not that I know of.

Q. Well as a matter of fact your experience with reference to testing and inspecting cars containing casinghead are only such cars as are being shipped by a casinghead producer and have a very substantial amount of casinghead in the car.  
[A.] Mostly so.

Q. At least forty per cent or about? A. Yes, sir.

Q. And most of them considerably above forty per cent isn't that true?

A. I cannot say as to that. We are not interested in the percentage.

By the Court: Now you will have to get through with these witnesses when you are through with them.

By Mr. Swacker: Well, Mr. Payne opened that question.

By the Court: Was that on redirect, what he brought out. Now I am going to hold you to the rule.

Q. Can you say what is the common vapor tension of Gypsy shipment that you have observed?

A. They were all below ten pounds.

Q. Why—were they all very close to ten pounds?

A. The majority were, yes, sir, there were some that was considerably less, perhaps as low as five or six.

Q. But those were very rare cases? A. Yes, sir.

Q. And as a general rule would be around nine or ten pounds, that correct?

A. Yes, sir, eight and a half to ten pounds, yes.

Q. Do you know of any tariff rates on unrefined naphtha running from the Muskogee district to Coffeyville, Kansas?

A. No, sir.

By Mr. Payne: I object, he has to put the rates in by the tariff the same as we have to do.

By the Court: Yes.

By Mr. Payne: May I recall this witness for one or two additional questions. I want to ask him.

By the Court: Well, now—

By Mr. Payne: I want to introduce these safety regulations certified to by the Secretary of the Interstate Commerce Commission and containing the regulations in force throughout the period.

By the Court: If they are certified to you can introduce that without the witness.

By Mr. Payne: I offer these at this time as Government's Exhibits 61, 62 and 63.

By Mr. Swacker: At this time we make no objection on the point of their competency but reserve the right to object to the legal effect if and when the court may determine to instruct the jury concerning any matters contained in those exhibits.

By the Court: Very well.

Q. Referring again to the rules relating to the dome placarding, were those dome placards required for shipment for naphtha? A. No, sir.

Q. Were they required for any other commodity than casinghead gasoline alone, on casinghead gasoline blended with some other liquid? A. No, sir.

Q. That is all.

By the Court: Stand aside.

(Witness dismissed)

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And thereupon, S. R. SCOTT was produced, sworn and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. S. R. Scott.

Q. Where do you live, Mr. Scott? A. Tulsa, Oklahoma.

Q. What is your business?

A. Inspector, Bureau of Explosives.

Q. How long have you been engaged in that business?

A. Since June 1, 1916, with the exception of a period of about 22 months I was in the army.

Q. Since June 1, 1916? A. 1916, yes, sir.

Q. What are your duties as inspector?

A. To inspect the manufacture and transportation of explosives and other dangerous articles.

Q. In connection with those duties, has it been incumbent upon you to inspect casinghead gasoline and test casinghead gasoline blended with other products? A. Yes, sir.

Q. Where have your duties called you, I mean by that what states have you— A. State of Oklahoma.

Q. Your duties have been limited to the inspection of this material in the State of Oklahoma? A. Yes, sir.

Q. And in what particular places have you inspected casinghead gasoline and products that have been blended with it?

A. Wherever it is manufactured in the State of Oklahoma, the entire state.

Q. I wish you would, as near as you can, designate what places, giving the names.

A. I have inspected Drumright, Oilton, Kiefer, Glenn Pool, Jenks, Bixby, Leonard, Stone Bluff.

Q. That is, in all of those places they manufacture casinghead gasoline and they ship it from those places?

A. Yes, sir.

Q. Now, as—what plants have you inspected at Kiefer, Oklahoma?

A. I have inspected the Crosby and Gillespie, D. W. Franckot, Gypsy, Chestnut and Smith, Oklahoma Petroleum & Gasoline, Tulsa Gasoline.

Q. Are they at Kiefer?

A. They are located around Kiefer, yes, sir.

Q. And do they do their shipping from Kiefer?

A. From Kiefer and Glenn Pool.

Q. Have you—in the performance of your duties, have you inspected a great number of tank cars of casinghead gasoline and casinghead gasoline blended with other products?

A. Yes, sir.

Q. Well, can you estimate about the number of tank cars you have inspected in your experience there?

A. From April 1, 1919, until December 31, 1919, I inspected approximately five hundred and eighty tanks.

Mr. Swacker: 1919, was that?

A. Yes, sir.

Mr. Swacker: This is all subsequent to the indictment.

Q. I did not get the first date. A. April 1, 1919.

Q. Well, now, did you inspect any cars at these various places that you have named prior to April 1, 1918?

A. Yes, sir.

Q. And what were the periods of time you inspected them?

A. From June 1, 1916, until September 17, 1917.

Q. And then you went away?

A. Yes, sir, I went to the army.

Q. And returned? A. April 1, 1919.

Q. April 1, 1919, and went back in the same employment?

A. Yes, sir.

Q. Are you familiar with the character of the shipments made by the Gypsy Oil Company at Kiefer? A. Yes, sir.

Q. Are you familiar with the character of the commodities, made—the shipments made by the Gypsy Oil Company at Drumright? A. Yes, sir.

Q. Are you familiar with the character of commodities of shipments by the Gypsy Oil Company at Jenks?

A. Yes, sir.

Q. Have you inspected a number of their cars?

A. Yes, sir.

Q. Now, prior to the time you went away, what would you say was the number of cars that you have inspected of these commodities, the casinghead gasoline and the casinghead gasoline blended with other commodities?

A. Of the Gypsy Company?

Q. Those of everybody?

A. Would be about the same proportion as the past year

Q. You think the proportion would be just about the same?

A. Average about fifteen to twenty tanks a week.

Q. Do you know what the Gypsy Oil Company, what their commodity they shipped from Kiefer and Drumright consisted of?

A. Casinghead gasoline blended with naphtha.

Q. And that was the same at Drumright? A. Yes, sir.

Q. And what was the character of the commodity that they shipped from Jenks? A. Raw, unblended.

Q. Unblended casinghead gasoline? A. Yes, sir.

Mr. Swacker: What was your first answer?

A. Raw.

Q. Well, when you say raw, do you mean casinghead gasoline as it is brought, produced at the compression plant?

A. Yes, sir.

Q. Now, are all of these casinghead plants that you have inspected, are they all—is their product obtained, produced from the compression method or system?

A. With the exception of a few who obtain it by absorption.

Q. Just incidentally, the absorption is generally the gasoline obtained from the natural gas and not from the casinghead gas? A. Yes, sir.

Q. That is the absorption gasoline, is it? A. Yes, sir.

Q. Am I wrong in saying that the substance obtained from the casinghead plant you call casinghead gasoline, the substance you get from the absorption plant, is that called absorption gasoline or natural gas gasoline?

A. Natural gas gasoline or absorption.

Q. And then the gasoline that you get from the refinery, you call that refinery gasoline, is it? A. Yes, sir.

Q. In other words, you designate the gasoline from the name of the method by which it is produced? A. Yes, sir.

Q. Now, did these other plants that you spoke of, did they blend their casinghead gasoline generally with naphtha?

A. Yes, sir.

Q. That is your understanding? A. Yes, sir.

Q. Prior to December 2nd, 1916, do you know how the Gypsy from Drumright, Jenks and this other place, Kiefer, do you know how they billed their commodity, I mean the name under which they shipped it?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial. We have admitted that about five times. It has been proven by half a dozen witnesses.

The Court: Why can't you reserve your same exception if they want to put it in?

Mr. Diggs: It is already in the record.

By Mr. Chambers: Let me—I may have misled this witness and you may have a wrong idea. I understand that Jenks and Drumright did not come in—that is you people, the Gypsy, did not ship from there until sometime in 1917 so I will have to limit that question to Kiefer prior to December 2, 1916?

By Mr. Swacker: We make the same objection, it is incompetent, irrelevant and immaterial.

By the Court. Now, what is the question.

By Mr. Chambers: The question is as to what designated name if you know prior to December 2nd, 1916.

By the Court: They have admitted they shipped it in that name.

By Mr. Chambers: I was simply proving those same facts by another witness.

By the Court: They have admitted it in the record as a fact. They shipped it that way. They reserved their objection to it, that is a relevant fact.

By Mr. Chambers: Will you permit me to say I had not taken that matter into consideration when I asked the

question is all. Now, if that is an admission that they shipped it as gasoline that is satisfactory.

By the Court: They have admitted it but they claim it is irrelevant and reserve the right to strike it out if the court so sees fit.

Q. What other places besides Kiefer, Jenks and Drumright was this commodity where casinghead gasoline is blended with naphtha, what other places and what other plants have you inspected and know the character and know the designated term by which it was shipped in Oklahoma?

A. Crosbie and Gillespie at Kiefer.

Q. We are eliminating Kiefer, Jenks and Drumright, what other places?

By the Court: I confine this to how it was known, what the practice was in the commercial world and the railroad world under the safety rules what they call it when they ship it and the practice.

By Mr. Chambers: If he knows.

By Mr. Swacker: I want an exception on the grounds he has not been qualified.

By the Court: Yes, they will have to qualify him and the practice under their bureau of inspection and then if he knows the practice in dealing with a railroad—

By Mr. Swacker: We admit his qualifications as an inspector under the safety regulations but object to him testifying on any other grounds unless they qualify him and I can see if he testifies on the grounds of his relations to the railroad world we are getting into the tariff proposition which your honor has excluded.

Q. What places do you know of this commodity—wherein the gasoline is blended with naphtha, you know the designated name by which—

By the Court: No, you will have to qualify him first how many places have you inspected during the period you have both before and after the war how many places have you inspected?

A. Kiefer, Glenn Pool, Jenks, Bixby, Stone Bluff, Leonard, Muskogee, Ardmore, Cleveland, Oilton, Cushing, Yale, Covington, Gary—

By the Court: Now in this business have you been brought into contact so as to know the terms they use when they sell this commodity and the names they call it by?

A. Only the names under which they ship it.

Q. Now then, in these various places that you have stated to the court in all of those place- they ship casinghead gasoline blended with naphtha? A. Naphtha and kerosene.

Q. Naphtha and kerosene? A. Yes, sir.

Q. Now then, what is the name under which these various plants—

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: I don't think this witness comes under the rule. Now this man Hays when he came in he showed he had a central selling agency and he sold and he was dealing with the commercial world. He was giving the instructions. That is the testimony.

By Mr. Chambers: I take it that these other people necessarily if they were shipping it were either selling it or dealing with the commercial world.

By the Court: All he knows is just how they shipped it.

By Mr. Chambers: That is one of the branches of the commercial business.

By the Court: This other is in here, I don't believe I will permit this witness upon the qualifications that he makes to testify.

Q. Does the performance of your duties bring you into contact with the people that manufacture casinghead gasoline?

A. Yes, sir.

Q. Do you have occasion to go through their plants and see the methods by which they manufacture these products?

A. Yes, sir.

Q. Do you talk with them with reference to what is the name of the product which they manufacture? A. Yes, sir.

Q. I will ask you to state what is the designated term by which they refer to this particular commodity and these various blends.

By Mr. Swacker: I object, irrelevant and immaterial and there is no connection shown in what respect they refer to it. If they are referring to it in connection with his functions that of course is limited to the safe transportation regulations.

By the Court: In what way would you be talking to them?

A. When they give it a name and call it?

By the Court: Yes?

A. I am required to find out the pressure they use as to

low and high stage, whether it is blended or unblended, whether it is steamed, temperature of the steam, whether the plant is provided with appliances, storage facilities, storage capacity, and

By the Court: And it is in that capacity you come in contact with them and talk with them?

A. Yes, sir.

By the Court: I will let him testify.

Q. Now what do they call it? A. Gasoline.

Q. Was this the name they called it prior to December 2, and after December 2, 1916?

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: Very well he may answer. It was the same product?

A. Yes, sir.

By Mr. Chambers: As far as I can think of now that is all.

By the Court: Well, you had better know, I am going to stop this chaffing around.

By Mr. Chambers: Well, I am thinking as hard as I can.

By the Court: Take the witness.

*Cross Examination by Mr. Swacker.*

Q. Have you heard them call it by other names also, such as naphtha blend, kerosene blend, gas oil blend, names such as that?

A. They have described it to me in the plant as being blended with naphtha, blended with kerosene, blended with fuel oil or whatever the blend may be. Raw as they spoke of it, unblended.

By Mr. Swacker: That is all.

(Witness excused)

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Whereupon, BARNHART, a witness on behalf of the Government, having been first duly sworn, according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Barnhart by Mr. Chambers.*

Q. What are your initials, Mr. Barnhart? A. W. H.

Q. You live at Kiefer? A. Yes, sir.

Q. What business are you in?

A. I have got charge of the D. W. Franchot's plant and oil fields.

Q. What is the character or kind of plant that Franchot has? A. A gasoline plant.

Q. Do you produce gasoline and casinghead gas?

A. Yes, sir.

Q. And what do you call it? A. Gasoline.

Q. Now, then, do your duties—you tell me what you have to do with the manufacture of this gasoline.

A. Well, we compress it, heat it and cool it.

Q. Do you oversee that, see that it is attended to, are you familiar with all of the processes from which the commodity comes from the well up to the production of the commodity? A. Yes, sir, I have charge of it.

Q. And how long have you been in that business?

A. Well, let's see, about five years?

Q. About five years? A. Yes, sir.

Q. And with this same company at the same place?

A. Yes, sir.

Q. And do you ship the commodity that you manufacture and the casinghead gasoline before it is blended, or do you then blend it with other products? A. We don't blend.

Mr. Diggs: To which we object, as incompetent, irrelevant and immaterial, and hearsay, as against this defendant, and I don't want to keep making these objections. Subject to the motion to strike out.

The Court: Yes, go ahead.

Q. You say you don't blend it? A. I don't. I weather it.

Q. You weather it? A. Yes, sir.

Q. Do you ship it before you weather it? A. No.

Q. You don't ship it where it is above the ten pound vapor? A. No.

Q. You weather it? A. Yes, sir.

Q. And then you ship it? A. Yes, sir.

Q. And by weathering it—I don't think it is necessary to go into that process for it is merely exposing it to the weather.

Mr. Swacker: The record already shows.

Q. It is just exposing it to the atmosphere until the vapor pressure gets down to below the ten pounds? A. Yes, sir.

Q. And then you ship it. Now, where do you ship it?

A. Well, different places; mostly to the Interstate Oil Company at LaCrosse, Wisconsin.

Q. And are there other plants of that character that you are familiar with?

A. Well, there is some that I have been in; I haven't got charge of them, and I don't know anything about them.

Q. Now, how do you designate—what name do you ship it under when you ship it? A. Gasoline.

Q. Do you sell it to the people up in Wisconsin?

A. Yes, sir.

Q. You sell it to them?

A. Yes, sir; the company does; they give me orders.

Q. And they sell it on orders from the company up there?

A. Yes, sir.

Q. And do you take the gravity of this commodity after it has been weathered? A. Yes, sir.

Q. And what would you say was the general—generally speaking, what is the gravity?

A. Well, anyways from seventy to seventy-five; it ain't all the same.

Q. From seventy to seventy-five gravity? A. Yes, sir.

Q. And do you take the color of it? A. Yes, sir.

Q. And what is the color of it? A. White.

Q. You mean by that, it is water white? A. Yes, sir.

Q. White as compared with water, and it is the same color as water? A. Yes, sir.

Q. Do you say that from your just naturally looking at it, or do you take a test of it?

A. I just look at it with a fair glass.

Q. This has been your practice, what you testified to, during the five years that you have been there?

A. Well, now, I haven't shipped gasoline five years. I have helped to make it that long, but I haven't shipped it only but about a year and a half.

Q. Well, do you know how it was shipped before that?

A. Well, I had nothing to do with it. I couldn't say. I am pretty sure it was shipped as gasoline; of course, it always has been.

Mr. Chambers: I believe that is all.

#### *Cross Examination by Mr. Diggs.*

Q. Did you select the name under which you shipped the commodity you have described or did you ship it according to the direction of other you said you shipped it according to the direction of others? A. What is that.

By the Court: What caused you to designate the name gasoline to that.

A. Well, that is my instructions to ship it that way.

Q. You don't select the name?

A. Of course it is gasoline, what I call gasoline.

Q. That is what you call gasoline?

By the Court: Who instructed you to do that?

A. From the office here, G. W. Franchot, G. W. Franchot's office.

Q. How long have you been in the shipping business?

A. What?

Q. How long have you been in the shipping business?

A. About a year and a half.

Q. Is the article you shipped to Wisconsin as gasoline there is there any other term or name under which you could ship it to the point you did ship it to of your own knowledge?

A. There ain't any that I know of.

Q. That is the only name you know of under which that particular product of the company can be shipped to the point you shipped? A. Yes, sir.

By the Court: Did you ever investigate to see?

A. Well, no, I did not.

By the Court: That is proving your negative without laying the foundation.

By Mr. Diggs: I am proving more to show his knowledge bearing on his knowledge of the facts, that is all.

*Further Direct by Mr. Chambers.*

Q. Who was in this plant, superintendent before you?

A. A fellow by the name of Charles Show.

By the Court: Now, as to the rates to these different points this expert can go out and make memorandum of that and return into court and read it into the record showing the fact each side ought to agree to that. They are entitled to have it in here the way this rate is here to these points and then we can see if it is gasoline or unrefined naphtha and they should go on and say which it is and the expert ought to get it up and you ought to be able to agree to that.

By Mr. Gann: There seems to be an impression in this trial the shipper cannot name the commodity any name except the name designated in the tariff and rules and it has always been the custom for the shipper to designate whatever commodity it is and the duty of the railroad company to apply that tariff to the commodity so designated.

Mr. Swacker: Your honor has suggested to us that we would have to produce proof concerning the rate.

The Court: Now, to my mind, a man who is not a

rate man says he don't know. That wouldn't prove anything. They ought to allow this Interstate Commerce rate man to say what it is and put it in the record.

Mr. Swacker: Our contention was that the only way it would have been competent evidence would be if they had laid a foundation by showing that there was a choice of rates. Your honor puts it up to us to show all the rates.

The Court: You have your exceptions.

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And thereupon SID HOUSTON OTEY, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

- Q. State your name to the jury. A. Sid Houston Otey.  
Q. What is your business, Mr. Otey? A. Inspector.  
Q. Inspector of what, and where? A. In the laboratory.  
Q. Where? A. Where?  
Q. Who are you employed by? A. By the Gulf Company.

The Court: Whereabouts?

- A. Port Arthur.  
Q. The Gulf Refining Company at Port Arthur, you are an inspector in the laboratory? A. In the laboratory.

Q. Mr. Otey, can you state what was shipped from Port Arthur to Kiefer, Oklahoma, consigned to the Gypsy Oil Company, Gasoline Department, from Port Arthur during the period from December 2, 1916, to May 31, 1919?

- A. State what grade of oil?

Mr. Swacker: Just a moment. I object. This witness isn't even shown to have anything to do with shipping, but it has been testified to by everybody that naphtha was the commodity brought up to this place.

Q. I am asking him if he knows what it was, what was shipped up there for blending.

The Court: If he knows, he may answer that.

+ A. Naphtha.  
Q. How was that naphtha designated upon your—upon the records of the Gulf Refining Company?

Mr. Diggs: I object to that as incompetent, irrelevant and immaterial, and the witness not shown that he knows anything concerning the records of the Gulf Refining Company.

The Court: Well, if he knows. What are you asking him about now?

Mr. Payne: I am asking him about shipments of naphtha.

The Court: From Port Arthur to Kiefer and Jenks?

Mr. Payne: Yes, sir.

Mr. Diggs: We object, on the further ground, we are not charged with any offense in this indictment of the material shipped from Port Arthur up here.

The Court: This is the records of the defendant now. Go ahead. Let him introduce that.

A. What do you mean? I didn't understand that.

Q. I asked you what was shipped north to Kiefer?

A. Naphtha.

Mr. Payne: Did the reporter mark this as Government's Exhibit 64?

Q. Referring to Government's Exhibit 64, will you state if that is in your handwriting? A. It is.

Q. Where it is an original record of the Gulf Refining Company? A. Yes, sir.

Q. Made in the regular course of business? A. It is.

The Court: Now, when did you make that?

A. This was made on Thursday, April 11, 1918.

The Court: How come you to make that?

A. It is our daily form. There are three of them.

The Court: Now, what does your daily form represent?

A. It represents our day's work by the eight hours.

The Court: Now, whose duty was it to make up that form?

A. It was mine, whoever was on this shift. You see, there are three shifts, and I got this one.

The Court: You make the entries in the performance of your duties as an inspector?

A. I did, yes, sir.

The Court: Go ahead.

Q. State the circumstances under which these sheets were made here, why they were made, and what they show, in general.

A. Why, this is just a copy of the daily routine work.

The Court: Let me have that. Now, he has already testified that these were the records made in the process

of the daily business. Now, I will let you take up each item, and ask what that is and explain what that is, if you want to.

Mr. Swacker: My objection runs principally—we say it is naphtha and they say it is naphtha. There is no dispute but what it is naphtha.

The Court: I don't know what they want to introduce it for, and I was pointing out the way to get it in the record. What is it you want to introduce now?

Mr. Payne: For the purpose of showing that the naphtha shipped to Kiefer and Drumright for blending there was a refined naphtha.

Mr. Swacker: We will admit that it was a treated naphtha, and would be a sufficiently treated naphtha for some purposes, and we are perfectly willing to admit the exact character of it.

By Mr. Payne: Will you admit it was refined as naphtha is ever refined?

By Mr. Swacker: No sir, and this witness is not qualified to state this.

By the Court: Very well, ask him if he knows.

By Mr. Swacker: This witness would not have anything to determine how—

By the Court: Yes, but he can take those items and that sheet as a basis, he has identified it as to what it is.

By Mr. Swacker: The evidence would be as to what the witness would say.

By the Court: But after he had laid the predicate ask the question.

Q. Referring to the items here in the first column, painters naphtha will you state what the number means under the heading?

By Mr. Diggs: We object to him stating what it means but he may state what it is.

Q. Explain what your record is?

A. The next number under the—

Q. No what the number in the next column under that?

A. That is the number of the tank.

By Mr. Payne: I don't want to lead him—

By the Court: Go ahead and lead him.

Q. Do you—does this sheet show the result of the test of the oil in that tank?

By the Court: No you cannot ask him that because that sheet cannot be introduced to prove that.

By Mr. Diggs: May I interrupt and ask the witness a question which I understand to be a fact. Is that in your handwriting?

A. Yes, sir.

By Mr. Diggs: Did you make it or copy it from some other record?

A. No, sir, I copied it right down as I took it.

By Mr. Diggs: You made that at the time you took it?

A. Yes, sir, at the time it was taken.

Q. What was your duties, Mr. Otey?

A. Duties in the laboratory.

Q. What did you do in the laboratory?

A. All shipments were up to me for inspection.

Q. What did you inspect them for, what kind of inspection or test did you make?

A. It was gravity, color and distillation.

Q. Gravity, color and distillation? A. Yes, sir.

By the Court: Now take this, look at that and tell what the color, gravity and distillation tests of that car was, unless they will admit that and save time by agreeing to what that shows so it may be considered in *evi* for what it shows. You will have to proceed, give him that to refresh his recollection.

By Mr. Swacker: We will not admit this isolated car but perfectly willing for the witness to tell of his experience in the shipping out cars—

By the Court: Go ahead, take that one now you know how to get at it. Go ahead and proceed.

Q. Where would you get the samples from which you would make these tests, or with which you made the test?

A. From the sample boy.

Q. What would the sample boy do, where would he get the samples? A. He would get them from the tank.

Q. And you would make a test of it? A. Yes, sir.

Q. And then you would make this entry as showing the material or the kind of oil in that tank, is that correct?

A. Yes, sir, referring to the test of it.

Q. Referring to that sheet, I will ask you if, according to your work that day, your distillation tests that the oil in tank 338 was painters' naphtha?

Mr. Swacker: I object. The witness attempting to answer. It is apparent he knows nothing about where the

stuff he tested came from; whether from 838. All he knows is about the sample.

The Court: I will overrule the objection. The evidence is, and there is other evidence in the record to show that the system was that the sample would be taken in there to be examined. He testified he examined it in due course.

Mr. Diggs: The further objection that the witness not being shown competent to testify as to the nature of the articles tested, but only put down a list of certain things.

The Court: That is as far as I will let them go for the present. They will have to show that he is an expert and knows what that means.

Mr. Payne: The Gulf Refining Company considered him competent to do that work. I think that would be sufficient.

The Court: Well, it is your duty to ask him.

Q. Did you make your test under general instructions as to how the tests should be made? A. Yes, sir.

Q. You made an entry there painters' naphtha, what was your instructions?

Mr. Swacker: I object to him attempting to lead.

The Court: Let him get his question in the record. Then I will hear your objection.

Q. What was your instruction with reference to designating a particular oil as to painters' naphtha?

A. Why, it was no more than just—well—

Mr. Swacker: Did you have any instructions?

A. Well, now, wait a minute. Those tanks, they didn't always have the same kind of stuff in them.

Q. On that day?

A. They may have been painters' naphtha, or it may have been a low grade of gasoline, or it may have been some unrefined stuff or some bad stuff. I can not say what was in it on that day no more than what the gravity was and the color.

Q. Now, I ask you what your instructions were, and I call upon the court to instruct the witness to answer.

The Court: Yes. Answer the question.

A. Well, it is just as I said, we had orders to mark 838 painters' naphtha.

Q. It was tank 838? A. 838.

Q. Regardless of your distillation test?

A. Regardless of our distillation test, the gravity, or anything.

Q. State the gravity and the color of the painters' naphtha in tank 838 on that day as shown by your test?

A. Why, 55.6 and 25 plus.

Q. The gravity is 55.6? A. 55.6.

Q. And the color is 25 plus? A. 25 plus.

Q. Referring to an item on the second page of this exhibit, reading "Painters naphtha, tank 838, car 2187, order number, will you state what that indicates?"

Mr. Swacker: Now, I would like to make an objection to this method of examination. The court has ruled that paper is not proper evidence, and the prosecuting officer is simply reading items from it, incorporating them into the question, which is exactly the same as if the paper was put in evidence.

The Court: He can show him that and ask him what that means.

Mr. Swacker: He is reading the contents of the paper into the record.

The Court: I will permit him to do that.

Mr. Swacker: Exception.

Q. What does that order number there indicate to you?

A. Why, no more than every tank car that naphtha had an order number.

Q. And now these cars containing painters' naphtha from tank No. 848 were shipped out of Port Arthur on these orders? That correct?

A. Well, now wait a minute, we have some card slips on these things and a copy of the order number and the car slips on these shipped.

Q. That is the regular course of business?

A. Yes, sir. And on the car slips it is signed and these are, now whether that was shipped on that order number or not I cannot swear to it.

By the Court: Who signed the car slips, [A.] the chances I did and maybe somebody else.

Q. Do you know what order 11348 was? A. No, sir.

Q. Do you know of your own knowledge what was generally shipped to Oklahoma points between Kiefer and Drumright for blending purposes up there?

By Mr. Diggs: To which we object, as being incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Diggs: I except.

By the Court: If he knows he may answer.

A. Ask that again I did not quite get it.

By the Court: Do you know of your own knowledge what was shipped from the plant, the refinery at Port Arthur to points in Oklahoma, Kiefer, and Drumright.

By Mr. Diggs: If that is the question I have no objection he asked him for the purpose of blending. I have no objection to the point these cars were shipped to.

By Mr. Payne: I don't make any point on that. There is plenty of evidence on that.

By the Court: Answer the question I asked you, what was the commodity shipped there.

A. It was naphtha.

Q. What kind of naphtha?

By Mr. Diggs: I object, the witness has not shown himself qualified.

By the Court: Are you a chemist?

A. No, I am not.

The Court: What experience have you ever had?

A. None.

The Court: What have you been doing?

A. Inspector.

Mr. Swacker: I said I had no objection to his stating what the test showed, by the test. He can state what the material was in a mathematical way, as disclosed by the tests he made.

The Court: I will let you prove by him what they did with it. Where it came from, and what was done with it, if he knows.

Mr. Payne: I doubt if this witness knows.

Q. Do you know the processes by which this naphtha that was shipped to Kiefer and Drumright had gone through in the plant? A. No, sir.

The Court: I think that is as far as he knows.

Mr. Payne: He is in the laboratory, your honor.

Q. I show you Government's Exhibit Number 65, being a telegram signed Taber, addressed to Tryon, Port Arthur, dated March 24, 1917, and will ask if you have ever seen that.

Mr. Swacker: I object to the question.

The Court: Wait until he offers it in evidence. Go ahead.

A. I never did see it before.

Q. Do you know what the order number from the Gypsy Company calling for certain northbound shipments to Kiefer and Drumright was?

A. The order 7626, I recall that.

Q. That was to where?

A. I think that was to Kiefer. I am almost positive of that, because we had that nearly every day.

Mr. Swacker: I am perfectly willing to have that put in evidence, and admit that such a telegram was sent from Tabor to Tryon, the manager of the Port Arthur plant; that that particular telegram was sent.

Mr. Payne: Do you also admit that the cars that were shipped to Drumright were shipped in pursuance of that order?

Mr. Swacker: Yes, sir. As I said at the beginning, I will admit that we shipped a car of naphtha, such as the witness may say was the common gravity of it, to these points of origin here, regularly, on that order. I don't see what more can possibly be proved by attempting to associate this sheet with that order.

Q. Is that the order number for that order?

Mr. Swacker: Well, he says he has never seen that paper.

Mr. Payne: Do you admit that is the order number, 1138?

Mr. Swacker: I am not going to admit it, for the purpose of encumbering the record with a lot of figures.

The Court: Let it go in. He agrees it may be introduced that far.

Q. Where did you get the order number shown on this sheet of April 11, order number 11348, showing painters' naphtha as in cars 2187 and the three following?

Mr. Swacker: I beg to object to that same statement over and over again, "showing painters' naphtha" in certain cars, and so forth.

The Court: I will overrule the objection. You may have your exception. Go ahead.

A. What is that again?

Q. How do you know what the order number was?

A. From the car slips.

The Court: We are getting along mighty slow.

Mr. Swacker: If the sheets could have any possible competency, I would admit it in evidence. If it is going to be received in evidence to prove any particular com-

modity purporting to be shipped by that name, there appears on the sheet the painters' naphtha and the unrefined naphtha, if it proves one, it proves the other. We are willing for the sheets to be introduced, to be admitted in evidence, if it is to be treated in one way or the other.

The Court: If the sheet goes in, it goes in for all purposes shown by it unless restricted by the court.

Mr. Swacker: I was not objecting to its being introduced, as being an instrument purporting by this witness—

The Court: I am not so sure but what it would be competent, anyway, as a record, and you can read it, and you can consider it as a record of that date.

Mr. Swacker: I will withdraw the objection, and let it be put in, as indicating the test performed by the tester on that date.

Mr. Payne: I don't believe I have offered it. I will now offer it as Government's Exhibit 64.

The Court: It is admitted in evidence and considered read.

*By Mr. Payne.*

Q. How long ago did you say order 7626 was given?  
A. I don't know.

Q. You said you had been using it for a long time. About how long was it, to your best recollection?

Mr. Swacker: I am willing to make this concession, that they were regularly shipped—

Q. Was it five years?

Mr. Swacker: That they were regularly shipped upon the orders such as that introduced in evidence, directing that so many cars a week heavy naphtha be shipped from Port Arthur to each of these points, and that it was a material of such average gravity as this boy may recollect as the average run along from the period of time covered by the counts in this indictment. I don't know of anything more that could possibly be proved by him.

Mr. Payne: If he will admit that according to the records of the Gulf Refining Company, the naphtha shipped from Port Arthur to Kiefer and Drumright was regularly entered as painters' naphtha—

Mr. Swacker: I will not admit it was regularly entered, but frequently entered by the boys, but I don't know that it always was, as painters' naphtha, but I am willing to admit that it was a grade such as is commonly

suitable for such purposes as you would use painters' naphtha for, commonly used, commonly—such purposes as you would use painters' naphtha for linoleum or paint or those things of that sort, but that it was not a refined product suitable for gasoline. We can stay here ten days and you could not prove any difference, I am willing to admit that.

Mr. Diggs: That what was shipped to Oklahoma, which we call heavy naphtha, was indiscriminately billed under the name heavy naphtha, painters' naphtha, unfinished naphtha.

Mr. Payne: I am not speaking of how it was billed, that is another story.

Mr. Swacker: And how it may have been described, around the refinery.

Mr. Payne: Unless you will admit these sheets show it was painters' naphtha, there is no use to admit it.

Mr. Swacker: Very well, prove all these sheets.

Mr. Payne: Won't you admit it is in your records?

Mr. Diggs: I am willing to admit that record.

Mr. Swacker: We admit that that one day does, and many other days do.

The Court: Check them up and let all of them go in. Then you can examine the witnesses about the product generally that was covered by those papers.

Mr. Diggs: No question about the name. The gentleman wants us to admit, in addition——

The Court: There can be no doubt about what they admit!

Mr. Swacker: Certainly this witness is not a competent witness to attempt to classify this commodity.

Mr. Payne: Your honor, I will excuse this witness, for a moment, to substitute another witness.

The Court: We will take a recess until tomorrow morning, and in the meantime, get your records up.

Gentlemen of the jury, you may separate, under the usual instructions, until tomorrow morning at 9:30.

(And thereupon court took an adjournment until 9:30 o'clock a. m., Friday, April 16, A. D. 1920.)

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## MORNING SESSION.

April 16th, 1920; 9:30 a. m.

(Whereupon court met pursuant to adjournment, the Honorable R. L. WILLIAMS, Judge, present and presiding and the jury having been called by the clerk, one juror being absent, the following proceedings were had, to-wit:)

By Mr. Swacker: We have prepared a memorandum with respect to what we are willing to concede in the matter we were discussing last night.

By the Court: Have you shown it to the other side?

By Mr. Swacker: No, sir, they just this minute came in.

By the Court: I see there is one absent juror, do any of the jurors know where he is?

By a Juror: No, sir, I do not.

By the Court: Does anyone know where he is stopping?

By a Juror: At the Cotton Hotel.

By the Court: Phone the hotel and see where he is.

(The marshall's office reported that the absent juror was at the hotel and would be [ ] in a few minutes.)

By the Court: What is the cause of the delay, Mr. Juror.

By the Juror: Why, your honor, the man in the next room to me told me that it was nine o'clock and I had just gotten up. I left an eight o'clock call and went back to sleep again.

By the Court: Whereabouts do you live?

By the Juror: At the Cotton Hotel.

By the Court: Where do you live when you are home?

By the Juror: At Wewoka.

By the Court: Now you were little late yesterday morning.

By the Juror: I will be here on time after this.

By the Court: Do you know what I ought to do to you? I ought to fine you enough to pay the expenses of this court the twenty minutes you delayed it, but I always apprehend a man that is careless would not be able to pay that fine. You know that is what is the matter with the world. We don't appreciate its relationship. I don't

see how a man could sleep until nine o'clock this kind of morning.

By the Juror: Your honor, I was up mighty late last night.

By the Court: That is just what I thought. A man that is on as a juror ought to keep regular hours so that his mental faculties would be in good shape.

By the Juror: I can show good cause why I was up late last night on a telephone call and telegraph business attending to some business. It is business that kept me up late.

By the Court: I will let you off this time but don't let this thing happen again. Proceed.

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And thereupon, S. G. SANDERSON was produced, sworn and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. S. G. Sanderson.

Q. And where do you live? A. In Tulsa.

Q. Are you connected with the Gypsy Oil Company?

A. Yes, sir.

Q. What is your position with the Gypsy Oil Company?

A. General Superintendent, Gasoline Department.

Q. Which is located here in Tulsa, is that right?

A. Yes, sir.

Q. Are you in any way connected with the—how long have you been connected with the Gypsy Oil Company?

A. Since August 1, 1919.

Q. Weren't you connected with the Gypsy Oil Company prior to that time? A. Beg pardon?

Q. Weren't you connected with the Gypsy Oil Company prior to that time?

A. Prior, to that time, yes, sir, connected with them.

Q. Where were you located? A. Kiefer.

The Court: In what capacity?

Q. Yes, in what capacity and during what years?

A. Day man from September, 1913, until September, 1916.

Q. During the time you were connected with them in 1913, were they—was the plant completed at that time in Kiefer? A. No, sir, it was not.

Q. When was it completed?

A. It was completed the first of 1914, it was being built in 1913 and 1914.

Q. When did they commence operations, making casing-head gasoline?

A. I don't remember the exact date of that.

Q. Give me your best recollection with reference to that?

A. I will say it was along in December of 1913, about that time.

Q. Along in what time? A. December, 1913.

Q. December, 1913? A. Yes, sir.

Q. Were they shipping to Port Arthur at that time?

A. I could not say. That is a matter of record, and I was not connected with it in that capacity.

Q. What do you mean when you were, what did you do?

A. General work around the plant, whatever there was to do, keep the records and take the gravity.

Q. You were keeping the records and taking the gravity of this commodity as it came from the plant? A. How is that?

Q. You were keeping the records and taking the tests of the commodities that came from the plant that was manufactured there in the plant?

A. Yes, sir, and the general work and looking after the material and everything there was to do.

Q. And were you at that time transporting commodities from Port Arthur to Kiefer and blending it with your products at the plant and reshipping it to Port Arthur?

A. I don't know they were shipping it to Port Arthur, it is a matter of record and I could not say definitely, to the best of my knowledge they were.

Q. They were receiving commodities from Port Arthur that were blended with this material?

A. They were receiving material, I could not say whether it was from Fort Worth, or Port Arthur, in fact was not in charge, doing day labor around there.

Q. Were you blending the materials you received from the south with the product that you produced there?

A. Yes, sir, they were receiving it at that time they were.

Q. Now, then, who had charge of the shipping of that commodity at that time? A. Mr. Donovan.

Q. You say that you took the test, did you take the test of the commodities that came from the south?

A. Yes, sir, I was taking the test at that time.

Q. And you took the test from the commodities that came from the plant, that were produced there? A. Yes, sir.

Q. And you took the test of the blended commodity after the two were put together?

A. Yes, sir, I was taking the test, I was taking tests as they were loaded.

Q. Now then do you remember—do you know of your own knowledge whether they were shipping this blended material at that time?

A. Yes, sir, they were if I remember.

Q. That is you know they were producing the casinghead gasoline at the plant, you know they were receiving a material from the south that they blended with that and you know they shipped that out?

A. Yes, sir, that would be my memory of it.

Q. And do you know where they shipped it?

A. No, I could not say definitely, I did not look after that.

Q. Do you know the designated term, the name under which they shipped it?

By Mr. Swacker: We would just like to make the same objection we have made all along on that point as incompetent, irrelevant and immaterial.

By the Court: Very well, you may reserve the same right to strike out the evidence as the other.

By Mr. Swacker: Exception.

(Question read by the reporter.)

A. As I remember it was gasoline.

Q. Now, this in December, 1913, and you were there during the year 1914? A. 1914.

Q. You were there during the year of 1915? A. Yes, sir.

Q. And how much longer were you there? A. Kiefer?

Q. Yes, A. To September, 1916.

Q. To September, 1916? A. Yes, sir.

Q. Do you know that this same process that you have explained was carried on by them during that entire period?

A. Yes.

Q. I mean by that, that the gasoline was produced there at the plant, that they received the material from the south, blended it with the material there, and then shipped it again to Port Arthur, and they called it gasoline?

A. That was the general procedure, yes, sir.

Mr. Swacker: Our objections and exceptions will apply to these last few questions, also?

The Court: Yes.

Mr. Chambers: That is all.

The Court: Now, it seems to me that this is a duplication of what was admitted yesterday. I understood they admitted that was the practice before and afterwards. They saved their right to strike it out on the

ground of being irrelevant and incompetent. That is an admitted fact. That is an admitted fact for the purpose of this case, subject to their objection and exception, on the ground of irrelevancy and incompetency.

Mr. Chambers: Do I understand that these facts that this witness has testified to are admitted?

The Court: They have admitted it by other witnesses, the same thing, it comes as an admitted fact for the purpose of this case.

Mr. Chambers: The only reason this witness was put on was because, as I remember the testimony and the admission, I may be mistaken, they went from the month of May, 1916, up to the present time, and didn't go back of the month of May, 1916. And that was the purpose of putting on this witness, was to show that this transaction had continued during the entire period from the construction of the plant.

Mr. Swacker: We make a further admission to cover all that. I don't think this particular point has been admitted. We make a complete statement of what we admit subject to our objection. We admit from the inception, in the inception, at the plant in 1913, up until about the end of 1914 or 1915, the practice was to ship naphtha from Port Arthur to Kiefer, and there blended and shipped it, not back to Port Arthur or Fort Worth, but shipped it to northern points to market, shipped it to market, shipped the blended to northern points to market, and described it as gasoline.

Mr. Chambers: Also shipped it to Port Arthur?

Mr. Swacker: Not at that time, and if you have any grounds—

Mr. Chambers: I took the testimony of this witness.

Mr. Swacker: He said he could not speak with accuracy.

The Court: What is your best recollection?

A. I would say we did ship some, that is my best recollection. However, it is a matter of record and could be very easily secured and I did not bill it out and did not know where it went.

The Court: It is your best recollection some of that commodity was shipped to Port Arthur?

A. That is my best recollection.

Mr. Swacker: I will not extend the admission to that, but continuing the admission from where I left off,

that is, up to the year 1914, and the early part of 1915, the material was shipped to northern destinations, such as St. Paul and Minneapolis, and even Canada, and billed as gasoline; that beginning in the early part of 1915, shipments to northern markets described as gasoline, were discontinued altogether, with the exception of shipments to the Shady Side plant at Pittsburgh, which continued throughout the time up to the present, in fact, to be made and described as gasoline, and the balance of the material was all from thence forward shipped to Fort Worth, described as gasoline, to the Ft. Worth refinery, and thereafter, starting in 1915, continuing up to December, 1916, all of it except that going to Pittsburgh was shipped to Port Arthur refinery, billed and described as gasoline; that following December 2, 1916, shipments were made of the blended commodity from Kiefer only to Port Arthur, and described as unrefined naphtha and to Shady Side, Pittsburgh, to the company, the Gulf Company's plant, and described as gasoline in the billing. That is all, of course, subject to our objection and our exception.

By Mr. Swacker: Does that cover the entire field?

By Mr. Chambers: We accept that admission but we are still depending upon this witness' testimony.

By the Court: I will not permit you to cover any evidence covered by the admission.

By Mr. Chambers: I say we are still standing on this witness' testimony and we accept their admission.

By Mr. Diggs: If the court please, we move to strike from the record that portion of this witness' testimony which he says it is his best recollection at the time that this product was shipped in 1913 and 1914 back to Port Arthur, because he says—he shows it was not his business to ship and he had no connection with the shipping and no means of knowing.

By the Court: On what do you base your recollection? First, where did you get your information—what were your duties there?

A. I was loading the cars out and taking the gravity test of it and as I remember, after that time we did ship to Port Arthur and I don't remember just where we stopped.

By the Court: Now, in taking the gravity test and loading the cars did you have occasion to see the shipping orders and bills of lading and things like that?

A. No, that wasn't part of my business.

By the Court: Did it come under your observation

in the discharge of your duties, either directly or indirectly?

A. Well, they may have come under my observation, yes I have seen lots of bills of lading but I couldn't tell you when we stopped shipping north and went back to shipping to Port Arthur, as I say that is a matter of record.

Q. Have you got those records? A. The records are here.

By the Court: I will let you withdraw this witness and confer with the other side and get the record. Whatever they show, that is better. Of course, that is one way of proving a man's best recollection, but it is not a definite recollection. That don't have strong probative effect. If objection is made on the ground it was not the best evidence I will sustain that.

By Mr. Swacker: Very well, we make that now.

By the Court: I sustain it.

By Mr. Swacker: We will also admit—

By Mr. Chambers: I don't know.

By Mr. Swacker: You only have Kiefer, you haven't touched Drumright and Jenks.

By Mr. Chambers: How do you know we want that.

By the Court: Very well. Do you all want to cross examine the witness now?

By Mr. Swacker: Yes, sir.

By the Court: I struck the evidence out I don't suppose there is anything to cross examine on.

By Mr. Swacker: I was going to cross examine him on the grade of the blend. I have not stated that the blend was the same degree of blend.

By the Court: Did they ask him about the blend.

By Mr. Swacker: They asked him if it was blended. It isn't established as to whether it was the same character of blend at all that was shipped. That is the blend in 1914 was of the same character of blend that we shipped subsequently. We don't concede it was the same in this admission.

By the Court: Do you want to withdraw the witness.

By Mr. Chambers: No, sir.

By the Court: Go ahead, let's make progress.

Q. Now, what you testified to is the facts as you remember them of your own knowledge? A. Certainly.

Q. In other words, you never saw the shipping orders or bills of lading?

By Mr. Swacker: I object, that testimony has been stricken out.

By Mr. Chambers: I don't think this is a matter where the records are essential; this man is testifying from his own knowledge how they were shipped.

By the Court: You got that knowledge by seeing the bills of lading and shipping orders it was not—

Q. How did you get the knowledge?

By the Court: I asked him about that.

By Mr. Chambers: Let me ask him that question over please, how did you get the knowledge?

A. General observation about the plant, you must remember we ship out a number of cars—we shipped out a number of cars after that and I could not determine the date we started or stopped shipping.

By the Court: How did you get the knowledge as to how it was shipped or whether it was shipped as gasoline or naphtha?

A. That come from the records, I mean by that, the bills of lading, etc.

By the Court: Where are the bills of lading?

A. We have the bills of lading in the office. I don't know that they are here, now sir.

By the Court: I will let you—

By Mr. Chambers: I would like to have the bills of lading.

By the Court: I will let you have them.

By Mr. Chambers: You have them in the office, will you please bring them over?

By the Court: Will you produce them?

By Mr. Swacker: Yes, sir, if there are any shipments to Port Arthur just as soon as we can see the bills of lading we will be glad to admit it.

By the Court: He is the general manager. You can inspect the records and see what they are and have them here just so we will know what the facts are.

By Mr. Swacker: You can go back and look up and see if you have any shipments made to Port Arthur during the period of time from 1913 and 1914 and when we were shipping north and if so bring them along. If so you can come back and tell me and we will admit it. If not, bring them along so the other side can examine them.

**A. Any records of bills of lading.**

By the Court: Shipping orders or bills of lading or what some people call shipping orders and what some people call bills of lading.

By Mr. Swacker: The shipping order is lodged with the railroad company and the bill of lading with the shipper.

By the Court: They keep a copy.

By Mr. Swacker: Neither shippers order or bill of lading—it is the third copy. No cross examination.

By Mr. Chambers: We are through.

(Witness dismissed)

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H. W. MORRISON, called as a witness on behalf of the United States, having been first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name, please. A. H. W. Morrison.

Q. You are the Mr. Morrison that was here the other day?

A. Yes, sir.

Q. And you are the chief clerk of Mr. Donovan at Tulsa here? A. Yes, sir.

Q. And I want you to identify some letters, if you please, sir.

(Mr. Chambers asked the reporter to mark paper as Government's Exhibit Number 67.)

Q. I am handing you Government's Exhibit 7, and ask you if you can identify the handwriting there, and if it was received in your office.

The Court: Now, these records are just as accessible to one side as the other. I directed the clerk not to let them take them out.

Mr. Swacker: Yes, but we cannot anticipate what they are going to put in.

Q. (Question read by the reporter.)

A. It was received in the office. My initial appears on it, and the signature looks like the signature of Mr. Ellis.

Q. Well, what is your best judgment? You have received plenty of letters from him.

The Court: Do you know his signature?

Mr. Diggs: In order to save time, we will admit—

Mr. Swacker: Just for the purpose of this trial, we admit this is Mr. Ellis' signature. I do not know what his purpose is.

Mr. Chambers: And they were received by this office.

The Court: All these admissions are made under the general rule in this case only and in this trial.

(Mr. Chambers handed to the reporter papers and requested that he mark them as Exhibits, and they were marked as Government's Exhibits 68, 69, 70 and 71.)

Mr. Chambers: Do you admit these were received by Mr. Donovan?

Mr. Swacker: Yes.

Mr. Chambers: That is, Exhibits 67, 68, 69, 70. They admit, for the purposes of this trial, they were—

The Court: Let me see them.

Mr. Chambers: I am not offering them in evidence yet. I am just identifying them. That is all, Mr. Morrison.

The Court: Now, Mr. Donovan was manager of the Gypsy Oil Company?

Mr. Swacker: Yes, sir, gasoline department.

The Court: Very well.

Mr. Swacker: Now, may we have leave to recall this witness and permission in the meantime to examine the papers marked for identification, with a view to seeing if we desire to have him identify other correspondence?

The Court: I believe it has been proven that Mr. Ellis was both traffic manager for the Gypsy and Gulf.

Mr. Swacker: No, sir, it hasn't been absolutely proven that that was the case, and, as a matter of fact, it is really a confused question, as to whether he really has any relation to the Gypsy. As traffic manager of the Gulf, the Gulf being the purchaser of material from the Gypsy, he did appropriately in his capacity of traffic manager of the Gulf issue instructions or directions to the Gypsy in the person of Mr. Donovan, the manager, as to how he should ship that material. And we will admit that he did so instruct Mr. Donovan how to ship the material, doing so as traffic manager of the Gulf, but not doing so as traffic manager of the Gypsy.

The Court: The facts are not what the title states but what the practice makes him.

Mr. Swacker: There is no showing up to this time that he is.

Mr. Chambers: As far as the traffic manager—

Mr. Diggs: We will admit this, and then the court can instruct the jury as to the law; that is, it was a part of the duties of Mr. Ellis, as traffic manager of the Gulf Refining Company, to give directions to Mr. Donovan as to how the cars loaded with casinghead gasoline consigned to the Gulf Refining Company should be shipped.

The Court: And all its plants?

Mr. Diggs: All its plants in Oklahoma.

The Court: Would that apply to shipments to all points?

Mr. Swacker: No, sir, because all shipments made that he directed, were merely shipments that were made to the Gulf, and we say he did that in his capacity as traffic manager of the Gulf.

The Court: Regardless of whether north or south shipments?

Mr. Swacker: Yes, sir.

Mr. Chambers: Of course, they are voluntarily making these admissions in the record; we permit them to make them, but we are not bound by what they say.

The Court: No.

Mr. Diggs: We are just making them to save time.

Mr. Chambers: We are accepting them, as far as they go, but are not bound by them—by what they say.

The Court: Of course, you are not bound by the limitations, but you can supplement them.

Mr. Chambers: It is not an agreement on our part that those are the facts. For instance—

The Court: Nobody intimated that. The court has not.

Mr. Swacker: We merely assume the prosecution is attempting to prove these facts and we are conceding that to be the state of facts.

Mr. Chambers: What called my attention to it, they say casinghead gas. Of course, that is not an admission on our part.

The Court: Well, there is nobody understands it that way.

Mr. Chambers: Well, I did want it understood that way.

The Court: Go ahead.

Mr. Chambers: That is all, Mr. Morrison.

Mr. Swacker: May I make Mr. Morrison my witness temporarily, to identify some correspondence that may come up?

The Court: Very well.

*Examination by Mr. Swacker.*

Q. Mr. Morrison, will you please look at that paper and state if you can identify it?

The Court: You had better have it identified as an exhibit so you can get it in the record.

Mr. Swacker: Yes, sir.

(Whereupon the paper last above referred to was marked by the Reporter as Defendant's Exhibit number 72.)

Q. The paper marked Defendant's Exhibit number 72.

A. That letter was received in Mr. Donovan's office and shows Mr. Donovan's "D", which was his identification.

Q. You handle Mr. Donovan's correspondence?

A. Yes, sir.

Q. In the course of handling it, was any letter received from the Bureau of Explosives?

A. I couldn't recall of any particular letters. However, I do recollect there was letters received from time to time from Colonel Dunn.

Q. Well, were they letters of that character, a carbon copy merely signed with a rubber stamp. A. Yes, sir.

The Court: Now, satisfy yourselves that all these letters actually exist and stipulate to that, and save time.

(Paper handed to the Reporter and marked Defendant's Exhibit number 73.)

The Court: Let's get the facts before the Court and the jury with as little delay as possible.

By Mr. Swacker: If the Government will admit defendant's exhibit No. 72 for identification was a letter from Colonel Dunn of the Bureau of Explosives—

By Mr. Chambers: Can't you submit those to us?

By Mr. Swacker: I just got these two.

By Mr. Chambers: I can't decide anything in a minute, I am too slow.

By Mr. Swacker: You folks have seen a lot of that stuff, you ought to know it as well as you do money.

By Mr. Chambers: We admit this is a letter from Dunn.

By Mr. Swacker: Carbon copy sent Donovan?

By Mr. Chambers: It shows on its face, yes.

By Mr. Swacker: This is a carbon copy, defendant's exhibit No. 73 carbon copy from Inspector League to Colonel Dunn, carbon copy to Mr. Donovan.

By Mr. Chambers: This don't show it. It hasn't got Mr. League's signature on it.

By Mr. Swacker: It hasn't got any signature on it.

By the Court: Investigate and see.

By Mr. Swacker: You are excused Mr. Morrison.

(Witness dismissed)

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By the Court: I am going to insist on both sides hereafter to agree to matters that are facts and see if possible, find out what the facts are and then if it becomes a question of law whether it is admissible.

Whereupon, MR. HOAGLAND, a witness for and on behalf of the Government having been first duly sworn according to law was called to the witness stand and testified as follows to-wit:

*Direct Examination of Mr. Hoagland by Mr. Chambers.*

Q. You may state your name, your name is Mr. Hoagland? A. Yes, sir.

Q. Have you been on the stand before? A. No, sir.

Q. You are connected with the Gypsy Oil Company, gasoline department, since August 8, 1917? A. Yes, sir.

Q. Did you have anything to do with the shipping of gasoline? A. I did.

Q. Representing the Gypsy Oil Company? A. Yes, sir.

Q. Did you have anything to do with the shipping of gasoline? A. I did.

By Mr. Chambers: The purpose of this witness is to show the materials shipped from Kiefer was shipped north and south the same as here and from the same tank.

By Mr. Swacker: We will admit that.

By Mr. Chambers: One shipment north and the other shipment south? Will you admit during this period that there was a commodity manufactured at Kiefer shipped out of the same tank at Kiefer, one car loaded, designated as gasoline, designated Shady Side, Pennsylvania,

and the other designated unrefined naphtha to Port Arthur?

By Mr. Swacker: We do.

By Mr. Chambers: At the same time.

By Mr. Swacker: Yes, sir. Our previous admission was it was the same material and if it makes it stronger we will say it is out of the same tank at the same time and this not as strong as the other.

By Mr. Chambers: We have the other admission in. That is all with this witness.

By Mr. Swacker: Of course this is admitted subject to our objection to the admissibility of the evidence that it is incompetent.

By the Court: Yes.

By Mr. Swacker: The Government states that they will admit the paper marked Defendant's Exhibit for identification 73 is a carbon copy of a report of the Inspector of the Safe Transportation Bureau named League to Colonel Dunn, chief inspector. This carbon copy to Mr. Donovan of the Gypsy Oil Company. Is that correct, Mr. Gann?

Mr. Gann: That is correct, yes, sir.

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P. T. McKIRAHAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name, please. A. P. T. McKirahan.

(Whereupon Mr. Chambers requested the Reporter to mark papers as Government's Exhibits 75 and 76.)

Mr. Swacker: We admit that the paper marked Government's Exhibit 75 is a letter from Mr. W. P. Donovan, Superintendent of the Gypsy Oil Company to Mr. P. T. McKirahan, General Agent of the Atchison, Topeka and Santa Fe Railway, Tulsa, Oklahoma, dated February 9, 1917. We understand it is not now offered in evidence.

Mr. Chambers: No. Now, will you admit that that is a letter he wrote to Mr. Donovan?

Mr. Swacker: No. This is to Mr. Koontz.

Mr. Chambers: Yes, I beg your pardon.

Mr. Swacker: We will admit the paper marked Government's Exhibit 76 for identification is a letter from Mr.

McKirahan last mentioned, to Mr. J. R. Koontz, General Freight Agent, Atchison, Topeka & Santa Fe Railway, Topeka, Kansas, dated November 10, 1916. By making this admission however, we do not admit the relevancy or competency of that letter when it may be offered, being between third parties.

Mr. Chambers: That is all, Mr. McKirahan.

Mr. Chambers: Just a moment, your Honor. These admissions have done away with certain testimony.

The Court: Now, to expedite and get this evidence before the jury, my idea is that after all the evidence is in, I will give you two or three hours on a side and hear you argue the facts and law before me, so I will get my bearings, we will have more time for that. That is my idea. That is, when you get all the evidence in. I will hear both sides discuss the law of the case.

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And whereupon J. H. KOONTZ was produced, sworn and examined as a witness for and on behalf of the Government, testified as follows:

*Direct Examination by Mr. Payne.*

- Q. State your name. A. J. H. Koontz.  
Q. Where are you employed?  
A. Gulf Refining Company, Port Arthur.  
Q. How long have you been employed there?  
A. About three years and a half.  
Q. What are your duties? A. At present.  
Q. Were you in the laboratory at one time? A. I was.  
Q. How long were you in the laboratory.  
A. About three years.  
Q. You left there about when? A. Two years ago.  
Q. The latter part of the summer of 1918? A. Yes, sir.  
Q. How long were you in the laboratory?  
A. About three years.  
Q. What were your duties in the laboratory, Mr. Koontz?  
A. Inspector.  
Q. Explain that a little more in detail.  
A. Well, my duties were to inspect the daily tanks and shipments going out and coming in.  
Q. The samples would be brought to you in the laboratory? A. Yes, sir.  
Q. And you would make certain tests of those samples?  
A. Yes, sir.

Q. What tests were made in the laboratory?

A. By me or by, you mean the full test?

Q. Taking up the first test you made personally?

A. Gravity and color.

Q. And what other tests were made in the laboratory?

A. Distillation. We made a doctor test at interval.

Q. Always made a doctor test? A. Not necessarily.

Q. When you made a doctor test, you would follow—you would so enter it on your daily test sheet, would you not?

A. Yes, sir.

Q. Did you usually make a doctor test on gasoline and naphtha?

Mr. Swacker: I object to that, because it is not shown this witness is qualified to testify concerning all the gasoline and naphtha that may be in the plant or all the material that may be there. He is asking did he usually make the doctor test. That is asking him to testify was the doctor test usually made of all the material in the plant. This witness is not shown to be qualified to do that.

The Court: Are you a chemist?

A. No, sir.

The Court: What qualifications do you have for making these tests? A. None whatever.

Q. How long did you work there? A. Three years.

Q. In what capacity? A. As shipping inspector.

The Court: What qualifications does it take to discharge that duty?

A. You mean what education?

The Court: Well, experience.

A. Well, practical experience is all that is necessary?

The Court: To make what test?

A. Gravity, color, doctor or distillation test.

The Court: Now, did you have the experience necessary to qualify you to make that test? A. I did.

Mr. Swacker: I do not dispute his qualifications to make these tests. I say his office was merely the function of performing that mechanical—

The Court: Ask your question again.

Q. Did you make the doctor test on gasoline and naphtha?

Mr. Swacker: I object to the form of the question. It is too indefinite by referring to gasoline and naphtha, or did he ever make and doctor test on gasoline?

The Court: Now, what doctor test did you make, on what commodities?

Mr. Swacker: I object to his attempting to testify to any particular commodities, as being unqualified.

The Court: If he knows, he may tell. Do you know what commodities you make a test on, and you may testify, and you can have your exception. Go ahead.

A. We made the doctor test when specified.

The Court: Well, propound the question to him.

Q. Specified by whom? A. The man in charge.

The Court: Who was usually in charge, what did they call him?

A. The man over me?

The Court: Yes.

A. Chief chemist; the man in charge of the laboratory in other words.

The Court: Well, have you got any specific instances you want to ask about? Go ahead.

Q. Now, isn't it a fact that the doctor test was made rather seldom, on gasoline and naphtha?

Mr. Swacker: I object to that. It is not shown the witness is qualified to know what gasoline and naphtha are.

The Court: If he knows, he may answer, and you may have your exception.

Mr. Swacker: Now, it is not shown he is qualified in the course of business. May I cross [ ] the witness just a minute on this?

By the Court: If he knows the physical fact I will let you cross examine afterwards and strike it out if it is not competent and relevant.

By Mr. Payne: Answer the question.

By the Witness: State the question please.

Q. Whether the doctor tests were usually made on gasoline and naphtha?

By the Court: If you know.

By Mr. Swacker: We object on the grounds stated.

By the Court: You have your objection and exception.

By Mr. Swacker: Exception.

A. I don't know that it was usually made on all stuff. I was only on for eight hours a day.

By the Court: What did you make it on then, if you know when you were on duty.

A. Made it on shipments of gasoline going out under specified order when necessary.

Q. What was the purpose of this doctor test?

By the Court: If you know.

By Mr. Swacker: I object to that.

By the Court: If you know, you say on specified orders when necessary. Now when was it necessary?

A. When we got the orders.

By the Court: If you know why did they make these tests, what were the tests made for if you know?

A. Sweetened tests.

Q. To determine whether it is sweetened or sour?

A. Yes, sir.

Q. Just what do you mean by sweetened or sour?

A. I could not define that.

Q. Where were you on the 73 shift usually?

A. No, sir, we changed shifts.

Q. You were on the 73 shift what was your first duty in the morning?

A. To see that the daily samples were gotten in.

Q. You would send the boys out to the tank to get the samples? A. Yes, sir.

Q. And tell them to bring *to bring* the samples back to you? A. Yes, sir.

Q. And then you would make a test of them? A. Yes, sir.

Q. Would they get a sample of all the light oil tanks in the refinery? A. I could not say.

Q. Did you instruct them to get samples?

A. We had a certain amount of tanks to get daily.

Q. From what tanks did you get the samples daily?

A. Tanks shown on the test sheet.

Q. 800 series?

A. We had some that was not on the 800 series.

By the Court: Let him see the test sheet, let him identify it if he can to refresh his memory.

A. All those.

By the Court: Name them.

Q. That included the gasoline and naphtha tanks?

A. Yes, sir.

By Mr. Swacker: We object, witness not shown to be qualified that he knew how many tanks what tanks anything relative to the tanks. There is no qualification shown the witness knew how many tanks or what tanks or anything relative to the tanks.

By Mr. Payne: It is clearly shown, he worked in there for three years and got these samples from these tanks every day.

By Mr. Swacker: He did not—

By the Court: Hold on, don't talk so much. You worked there three years?

A. Yes, sir.

By the Court: Do you know where the tanks were located?

A. Not all of them.

By the Court: Let me have that sheet. Now what tanks did you say they got samples from that come in the laboratory which you know?

A. The tanks shown on there.

By the Court: Now you can show this to him and have him give the number of the tanks, can't you Mr. Payne?

By Mr. Payne: Yes, sir.

A. This sheet will not comply with the usual amount of tanks, the chances are some of them will be empty at this date.

By the Court: Well look at that number and see whether samples were gotten from those tanks.

A. 805, 858, 838, 817, 850, 852, 855, 810, 843, and 849.

By the Court: Whose memorandum is that, who made those entries?

A. That is mine.

Q. State the numbers of the gasoline and naphtha tanks?

By the Court: If you know.

A. As shown here on this 805, and 857, are listed as gasoline tanks on this memorandum. 838 was listed as painters naphtha on that date. South Carolina gasoline distillate—

Q. Never mind about the distillates, just the gasoline and naphtha? A. That is all that is on there.

Q. At the time that you made your tests did you make a memorandum on a scratch pad showing the result of your tests? A. I did.

Q. And then did Mr. Timmons, come over and examine those memorandums of yours and state what the oil should be called?

By the Court: Who was Mr. Timmons.

A. He was in charge of the light oil department.

By Mr. Payne: He was what? Chemist or what?

A. No, sir.

By the Court: What was his duties?

By Mr. Swacker: He was on the stand the other day and testified with reference to blending.

By the Court: Oh, yes, I remember.

Q. And Mr. Timmons would indicate the kind of oil it was? A. Yes, sir.

Q. And then after you had made the test from all the tanks and these memorandums had been gathered together you would make up this sheet, this daily test sheet, is that correct? A. Yes, sir, daily test sheet.

Q. And then where would you send this sheet?

A. It would be taken up stairs for the stenographer.

Q. He would he take it to up stairs?

A. Come down and got it himself.

By the Court: What was his duties?

A. General stenographer of the laboratory.

By the Court: Under whose direction did he act?

A. The chemist, chief chemist.

Q. Did he make typewritten copies of these sheets?

A. I could not say.

Q. Do you know whether copies of these sheets went to the General Superintendent of the plant, Mr. Pritchard?

A. No, sir, after they left the testing room I could not testify to where they went at all.

Q. Is it not a fact that copies of these sheets were sent to Pittsburgh? A. I could not say that I do not know.

Q. Now Mr. Koontz, I notice some entries on the daily test sheet of February 17, 1918, unrefined naphtha—can you state whether the name, unrefined naphtha was used during the entire time you were in the laboratory?

Mr. Swacker: I object to that, on the ground that the papers are the best evidence, whatever the custom was in that respect.

The Court: I sustain the objection to that.

Q. Is it a fact that instructions were received by you in the laboratory that the oil that had been previously designat-

ed as Kiefer gasoline should thereafter be designated as unrefined gasoline?

The Court: And if so, when?

A. I cannot remember the date.

The Court: About when?

A. I could not say.

The Court: What year?

A. I could not say that.

Mr. Swaecker: If any importance is sought to be attached to that—I don't know what the facts are, but we will concede that the government is seeking to prove, that in substance instructions were issued to the laboratory boys to call this unrefined naphtha from the time that the practice to call it unrefined naphtha on the shipping arose? I don't know what the facts are in that respect, but we will concede that; but we deny the relevancy of it, and of course, we object to the admissibility of it.

The Court: Very well.

Mr. Payne: That is all.

*Cross Examination of the Witness Koontz by Mr. Swaecker.*

Q. What did you say your name was? A. Koontz.

Q. Isn't it a fact that you simply tested whatever material you were told to test, and you recorded the result of your test? A. Yes, sir, exactly.

Q. Did you have anything to do with directing the sample boys what to get to bring in to be tested?

A. We had a certain number of tanks there to be tested daily; the sample boys were changed often and we had to get the list from Mr. Timmons of the tanks, of what tanks were full at that time, or had any stock in them, and this, we would have to tell the sample boys what to get, none of the test—I should think would know what tanks, simply tested them as they were brought in.

Q. You directed the sample boy to get samples, you directed him to get whatever samples Mr. Timmons had told you to have tested?

A. That is the idea. Some of the tanks would be empty one day and have something in them at other dates.

Q. Did you actually know what was in the tanks yourself? A. I wasn't qualified to do that.

Q. Did you have anything to do with the classification in

the sense of describing by name any material that you handled? A. I got that from the officials.

Q. From Mr. Timmons?

A. You mean the daily tanks, that came from Timmons, the daily tanks.

Q. On the daily tanks, Mr. Timmons would tell you what to report the test as being? A. Yes, sir, that is the idea.

Q. And you had nothing to do with giving the name from specifications or tests you had just made?

A. None, whatever.

Mr. Swacker: Now, I move to strike out all his other testimony, on the ground it is shown he is incompetent to have attempted to have given any testimony as to what was in any tank.

The Court: I will sustain the objection as to what was in the tank, but let it stand that he made the test on those days, and what the practice was in getting information from Mr. Timmons, and that they marked these certain ones as gasoline, and so forth, afterwards.

Mr. Payne: Yes, that was the entire purpose of the testimony, your Honor.

The Court: Any statement that gasoline was in there, I exclude.

By Mr. Swacker: The reason I am objecting is there is an effort here to try to prove technical facts by these boys that have nothing to do but—

By the Court: Yes, but you can prove the practice of the plant. *He* is a plant that belongs to the defendant. It has installed its employees for a purpose. They understand what they know and if under their supervision such and such is done that involves the test of specific gravity or the distillation or the weight or anything else, the color, has been under supervision, that is marked so and so, that practice may be shown for what it is worth.

By Mr. Swacker: But the point I am objecting is this, though the practice may be shown it had been a custom to call a thing a certain thing, that is no proof as to what the thing was.

By the Court: As to the weight of the evidence that is a matter to be determined later. I hold that is evidence as to the weight of it, that is another question.

By Mr. Payne: That is all.

(Witness excused)

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By Mr. Swacker: I don't see from the evidence this last witness the Court has left any of his evidence but I would like an exception and move to strike it out if there is any supposed evidence there, if he has stated any particular commodity.

By the Court: Well whatever that is there it is stricken from the consideration of the jury. All that is left is what he knows within the scope of his duties, his acts and the evidence as to the instructions under which he acted. Then his evidence as to that sheet being gotten by the stenographer who worked under the Chief Chemist, the fact he come and got it and took it upstairs where the chief chemist office was but as to any copy being made he testified he did not know about that.

Whereupon MR. OTEY, a witness for and on behalf of the Government was recalled for further direct examination.

*Further Direct Examination of Mr. Otey by Mr. Payne.*

Q. Are you the same Mr. Otey who was on the stand yesterday? A. Yes, sir.

Q. Mr. Otey after you made these daily test sheets where did you send them, what did you do with them?

A. We left them right in the ledger.

Q. Right in the ledger?

By the Court: That a loose leaf ledger.

A. Yes, sir.

By the Court: Did anybody come and get them?

A. Yes, sir.

Q. Who? A. Several fellows.

By the Court: Whose duty was it anybody's special duty?

A. Yes, sir, it was the stenographer's duty, the stenographer to the chief chemist.

By Mr. Swacker: If the government will say what they are trying to prove we have no doubt it is so, but if they will state what they want perhaps we can agree on it.

By Mr. Payne: Some things the other witness did not know. If Mr. Swacker will concede a typewritten copy of these sheets made in duplicate, one copy sent to Pritchard, General Superintendent and another copy sent to Pittsburgh, and these sheets were working basis of the plant by which they moved all they had on hand and how they were going to meet the orders and do business—.

By Mr. Swaecker: If it is sought to prove these sheets were the working basis on which they did business and how they did business, we submit that he has already been unqualified for any such purpose as that.

By the Court: Go ahead, see what the witness is qualified to testify or not. I will let him testify if he knows copies were made.

Q. Do you know whether copies of these sheets were made by the stenographer?

A. I don't know, I am not positive about that.

Q. What would be the purpose of the stenographer coming down there and getting the sheets?

By Mr. Diggs: To which we object, irrelevant and incompetent, and calling for a conclusion of the witness.

By the Court: Yes, sir, unless he knows, do you know what the stenographer did with them when he came there and got them?

A. I know one thing he did.

Q. What?

A. He put them in a big ledger and kept them as a record.

Q. Did you ever see him copy them?

A. Sometimes he does. Yes, sir, certain things on those sheets.

Q. What? A. Shipments.

Q. What do you mean by shipments? A. Cars.

Q. Did you ever see him copy?

A. Copy the whole thing?

Q. Yes, sir? A. No sir, I never did.

By the Court: Have you any of the typewritten copies?

A. No, sir.

The Court: Go ahead. I will let you prove that he knew, if you can.

Q. I notice on many of these sheets, Mr. Otey, that there are order numbers in the last column; where did you get that order number? A. From the tank car loading slips.

Q. From the tank car loading slip? A. Car slip.

Q. Would that loading slip show the number of the tank from which the oil in the car was pumped?

A. Yes, sir, the majority of the times it would.

Q. The majority of the times?

A. Yes, sir, it is supposed to show it; if it didn't show it, we would find out and mark it on the slip.

Q. And you made your entries on these slips from that car slip?

A. Yes, sir, and from the tests of the sample that we got.

Q. Mr. Otey, where these sheets show an order number, then that indicates a shipment, does it? A. Yes, sir.

Q. And the car number shown on this sheet, indicates the number of the car in which the shipment has been pumped, into which a shipment has been pumped, is that correct? That is, referring to the first item on that daily tank sheet for February, 1918, showing gasoline in car number 1959, order number 45076; does that indicate that on that date, that gasoline was in that car?

A. Yes, sir, it was pumped from tank 805 and 838 into the car.

Q. That the gasoline was pumped from tank 805 and 838 into the car? A. Yes, sir.

Q. I will ask you to look at this same sheet that I mentioned a moment ago, and state the entries thereon, as to what was in tank 838.

Mr. Swacker: I object to the witness attempting to testify to the contents of a written paper.

The Court: Read the question.

(Question read by the Reporter.)

The Court: Well, let me have the sheet.

Mr. Payne: It is an important part of the case your Honor.

The Court: Now, who made the entry here on, relative to 838?

A. Look at the bottom of the sheet. Is there a name signed to it?

The Court: Is that your name, S. H. Otey?

A. Yes, sir, that is it.

The Court: Did you write the term painters naphtha after that?

A. Yes, sir.

The Court: How come you to do that?

A. What?

The Court: 838.

A. Let's see that a minute. Yes, sir, I did.

The Court: Each one of them there?

A. Yes, sir.

The Court: On five lines, one, two, three, four. Now, how come you to write the words painters naphtha there?

A. Because it was on the car slip.

The Court: I will let it go that far.

Mr. Swacker: We offered this morning to admit, and I can not see what can be sought to be proved.

The Court: I want to see what he is driving at. Go ahead. Now, this man testified the other day he was not a chemist.

Mr. Payne: Yes, sir. Did the witness answer the question.

The Court: I will not let him answer the question you propounded, but I propounded questions there and he testified he wrote the words painters naphtha opposite that number of tank, and that is the reason he did that, was because it was on the car slip. Is that it.

A. Yes, sir.

Mr. Swacker: We object, as incompetent, irrelevant and immaterial, no proof of anything of what was in the tank, and the car slip is not in evidence. It is a written document and it is the best evidence of its contents.

The Court: What was done with the slip?

A. They were turned into the main office with our signature on the bottom of them, saying they were up to the specifications, whatever they called for.

The Court: I will permit him to state he wrote that from the information he received by examination of the car slip—you did that in the course of the discharge of your duties as an employee of this concern?

A. Yes, sir.

The Court: And within the scope of your duties under the instructions you received in that capacity?

A. Yes, sir.

The Court: I will let it stand.

Mr. Swacker: May we have an exception?

The Court: Very well.

Q. Did the car slip designate the commodity as painters naphtha?

The Court: No, I will not let you go that far. They have an objection here to proving specifically what was in that. He has testified that he made that from the information that he got within the scope of his duties by examining those things, and that is as far as I am going to let him go.

Mr. Payne: I think that is far enough, in reality.

Q. Mr. Otey, did you receive instructions in the labora-

tory from your superiors that the entries in those sheets, Kiefer gasoline should be discontinued and that the term unrefined naphtha should be substituted? A. Yes, sir.

Q. Who gave you those instructions?

A. Well, I don't know, positively.

Q. Well, now—

A. I connot say absolutely who gave them to me.

Q. What is your best recollection?

A. It was either—

Mr. Diggs: I don't see any reason for encumbering the record with this.

The Court: Yes, they admit it, when did you get the instructions?

A. I don't know.

The Court: About what year?

A. Either the latter part of 1917, or the early part of 1918, as well as I remember, because I left there in 1918.

Mr. Swacker: Well, now, we withdraw our admission we made a while ago that it was about December, 1916.

The Court: My recollection was that you didn't state the time.

Mr. Swacker: We said that if they wanted it, we would admit it, but they didn't say what they wanted.

The Court: Very well.

Q. Mr. Otey I show you Government's Exhibit number 77, and will ask you if this book is the same record that was later kept on the daily test sheet, same kind of a record.

The Court: Let's see. You claim they discontinued that practice?

Mr. Payne: No, they first kept the record in this book and then adopted that sheet form.

The Court: You mean they discontinued the book and adopted the looseleaf sheets?

Mr. Payne: Yes.

The Court: Your question is that the book that was kept before the practice of the looseleaf sheets was adopted?

A. Yes, sir.

Q. Referring to an entry on page 266 of December 29, 1916, "Kiefer," I will ask if that is in your handwriting?

A. It is.

Q. Mr. Otey, look at that carefully and tell me whether,

at that time, that entry was made, you wrote it in, "Kiefer Gasoline?"

A. Whether I wrote it "Kiefer Gasoline?"

Q. Yes, sir, look closely.

A. Let's look back and see some more of my handwriting. That word "Kiefer," yes.

Whereupon Court resumed after a few minutes recess and the following proceedings were had and done, to-wit:

Q. Will you answer the question that I asked you?

A. Why it is something like my handwriting, I don't know whether it is or not. It is erased. You cannot see it plain enough to identify it.

Q. The words gasoline that was originally there, has been erased?

A. Yes, sir, I think so; looks that way, anyway.

Q. Now you said that your handwriting? A. That word Kiefer is my handwriting.

Q. Was that word gasoline that was written in there also in your handwriting? A. I cannot say for sure.

Q. Don't you know that that is your handwriting?

A. No.

Q. Do you mean to say,

By Mr. Swacker: We object to him cross examining his own witness.

By the Court: I will permit him to ask that.

Q. Maybe you can tell better by examining it with a glass?

By Mr. Swacker: I haven't the slightest objection whatever to showing the facts, whatever the fact is in relation to that matter but it obviously incompetent so far as any showing that has been made by the government.

By the Court: Well, now wait—

A. The first letter looks like mine.

Q. I guess if the first letter is yours—

A. I cannot positively say that it is mine though.

Q. Referring to page 272 of Government's Exhibit 77 I will ask you to examine the word Kiefer about ten lines down and I will ask you to state whether that word is in your handwriting? A. That word Kiefer is.

Q. Can you see gasoline was written in there and showing the entry originally read Kiefer Gasoline? A. Yes, sir.

Q. Can you see the word gasoline has been erased?

A. Yes, sir.

Q. Did you erase the word gasoline?

A. No, sir, I don't think so, I will not be sure.

Q. Do you know who did erase the word gasoline?

A. No, sir.

Q. Referring to page 276 of Government's Exhibit 77 about the middle of the page "Kiefer" and state whether or not that is in your handwriting? A. That is.

Q. When you made that original entry did you write Kiefer gasoline? A. I don't know.

Q. You know your own handwriting don't you?

A. I know my own handwriting all right enough but I cannot see enough of that to hardly see any of it.

Q. Now look close? A. I am looking close.

Q. Can you see evidence of erasure? A. Yes, sir.

Q. Can you also see an erasure of the ditto marks under the word Gasoline? A. Yes, sir.

Q. Did you erase the word gasoline there? A. No, sir.

Q. Did you know who did erase the word gasoline?

A. No, sir.

Q. Referring to page 286 of Government's Exhibit 77—

Mr. Swacker: We understand all this is going in over objection?

The Court: Yes.

Mr. Swacker: And exception?

The Court: Yes.

Q. State the date on which the entries were made on that page. A. January 8, 1917.

Q. Referring to an entry "Kiefer," about the middle of the page—

The Court: Now, this would be competent.

Mr. Diggs: If the Court please, we withdraw any objection.

Mr. Swacker: But we will move to strike it out as soon as it is finished. We have no purpose of trying to conceal it. That is the reason we are raising no objection until the government has gone as far as it can.

The Court: This may be competent evidence on the question of intent. This is a book that is a part of the records of the Gulf Refining Company.

A. Yes, sir.

Q. State whether that word "Kiefer" is in your handwriting? A. No, I don't think that is.

Q. You don't think it is? What was your answer?

A. No.

Q. Referring to page 330 of Government's Exhibit number 77, the item "Kiefer," on about the seventh line, and state whether that is in your handwriting? A. That was.

Q. Referring to an item over here, car number, will you explain whether—state whether you made a test of the contents of that car. A. As to gravity and color I did.

Q. What is the car number shown there? A. 1397.

Q. Can you see any evidences of an erasure there after the word "Kiefer?" A. Yes, sir.

Q. What was written in there originally, that is, what has been erased? A. Gasoline.

Q. The word "gasoline?" A. Yes, sir.

Q. Did you erase that word? A. I did not.

Q. Do you know who did? A. I do not.

Q. Referring back to the first item that you mentioned on page 272 of Government's Exhibit number 77, and to the entry Kiefer, state the number of the car. A. 1030.

Q. What is the date of the entry? A. January 1, 1917.

Q. Did you in the regular course of business, get a sample from that car and test it? A. I did not.

Q. I mean, did you in the regular course of business, receive a sample? A. I did.

Q. Which came from that car? A. I did.

Q. And did you test it? A. I did.

Q. And did you make the entry—strike that out. Referring to page 230 of Government's Exhibit number 77, state the date of the entries on that page? A. December 11, 1916.

Q. Referring to the word "Kiefer," at the top of page 270—230, rather, is that in your handwriting? A. No, sir.

Q. Referring to page 154 of Government's Exhibit 77 state whether or not near the end of the bottom of the page 154 Kiefer is in your handwriting? A. It is.

Q. State the date on which the *entires* were made?

A. November first 1916.

Q. Again referring to the item on page 276 of Government's Exhibit 77 state the number of cars according to this record from which the sample was taken?

A. The number of cars?

Q. Yes, sir, of the Kiefer Gasoline?

A. 1384, 1111, 242, 309, 1619 and 410.

Q. Referring to page 308, Government Exhibit 77, the word Kiefer about the middle of the page and state whether or not that is in your handwriting? A. No.

Q. Referring to page 276 of the Government's Exhibit 77 you have already testified that the entry about the entry about the middle page 276 Kiefer is your handwriting?

A. No, sir.

Q. Is it or not? A. It is not.

By Mr. Payne: I offer Government's Exhibit 77, in evidence.

By Mr. Swacker: We object to its receipt on the ground it is irrelevant, incompetent, and immaterial.

By the Court: Very well it may be admitted.

By Mr. Swacker: We now move to strike out all of the evidence—

By the Court: As far as it may be applicable to the certain points pointed out.

By Mr. Swacker: And move to strike it out on the ground it is incompetent, irrelevant, and immaterial, first as bearing on question of intent, inadmissible on that ground because the corpus delicti has not been established and second no offer and it has been shown where, when or by whom any erasures were made, and that in the absence of offer on the part of the Government to show when, where or by whom such erasures may have been, it is irrelevant and immaterial even on the question of intent.

By the Court: There is no dispute that these books are part of the records of the defendant.

By Mr. Swacker: Yes, sir, but they have been out of the defendant's possession three or four months.

By the Court: And been in the possession—who were they delivered to?

By Mr. Swacker: To the prosecution.

By the Court: Very well I will require the prosecution to introduce proof that they haven't changed these records. Unless this man admits that he changed them.

By Mr. Swacker: The witness has denied that he changed them.

By Mr. Payne: Does your Honor mean that I have to put Mr. Chambers and Mr. Gann and Mr. Stewart and myself on the stand for the purpose to show we didn't make those changes?

By the Court: Yes, sir, if you have had them in your charge two or three months. This evidence here is admissible and goes to the question of intent. If these books were in possession of the defendant and they turned them over to the prosecution and they have had them in their possession three months.

Mr. Payne: Why, the very facts in the case would indicate the records—

The Court: Well, I will let them argue it to the jury, then, and I won't stop them.

Mr. Payne: Well, the witness is excused for the time being.

The Court: I will let them withdraw him if they are not through with him.

Mr. Payne: Can I withdraw this witness temporarily?

The Court: Yes.

Mr. Diggs: If the court please, the defendant withdraws the objection to the admission of this book.

The Court: Very well. If they do that, that is still a fact that you have not accounted for, and I will permit them to argue it to the jury, that they were in your possession.

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EVERETT W. STEWART, called as a witness on behalf of the Government, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your name, Mr. Stewart.

A. Everett W. Stewart.

Q. What is your position?

A. Special agent of the Interstate Commerce Commission, Washington, D. C.

Q. How long have you held that position, Mr. Stewart?

A. I have been special agent for three years and in the commission for six years.

Q. As a special agent, Mr. Stewart, what are your duties?

A. To examine the records, the transportation conduct of railroads and shippers generally, to see that the law regarding transportation matters are properly enforced, and report those findings to the Interstate Commerce Commission, for appropriate action as to prosecution for any violation.

Q. Referring to Government's Exhibit 77, will you state how that book came into the possession of the Government?

A. On subpoena from the Gulf Refining Company at Port Arthur, Texas.

Q. Who was that book brought in by?

A. Mr. Tryon or Abel, I don't know which brought it in there, both of these gentlemen were at Muskogee when it was presented to the grand jury in 1919, in October.

The Court: Who is Mr. Tryon and Mr. Abel?

A. Mr. Tryon is general manager of the Gulf Refining Company at Port Arthur, and Mr. Abel, assistant superintendent, so I was informed, during my investigation.

Q. As special agent of the Interstate Commerce Commission, have you ever altered the records or doctored these books?

The Court: In whose possession has it been since it was brought here and delivered by either Mr. Tryon or Mr. Abel?

Mr. Payne: We will admit it has been in the possession of ourselves or the United States Attorney's office.

Mr. Swacker: I don't say the prosecution changed the records, but they have not promised any proof that will connect up any erasures.

The Court: I will hold this is sufficient to go to the jury when they offer evidence to rebut the idea anybody else made any change, while in their possession, and then I will hold that this is a *prima facie* case for the jury to consider.

Mr. Diggs: If the court please, this objection made by Mr. Swacker—he was, perhaps, not as familiar with the facts as we are. I don't want to accuse these gentlemen of anything.

The Court: I know you are not accusing them, but I have supervisory powers, the fact the Government has the power to have these records, the law doesn't destroy the rules of presumption in weighing the evidence on the trial.

Mr. Diggs: But I was going to make an admission, the defendant will admit, at the time of the surrender of these books to the United States authorities at Muskogee, to be used before the grand jury, that these erasures appeared in them.

Mr. Payne: Your honor, I ask leave to ask him a couple of more questions, and then put Mr. Gann on the stand.

The Court: No, they admitted that these erasures appeared on the books, and appeared there when the books were delivered into the possession of the Government and came from their possession.

Mr. Diggs: That is all right.

Mr. Payne: That is putting the government on the defense.

The Court: No, the court is running this trial.

(Witness dismissed.)

By Mr. Swacker: So far as I am concerned, I was not present at Muskogee and I didn't know about the condition of the books nor did I see them until they were pointed out. My motion to strike out is not based on any assumption of that kind but on the ground that there has been no effort to connect that up so as to make it competent.

By the Court: And the ruling of the court didn't carry any intimation against the prosecution. I stated in the presence of the jury, and I don't make intimations in my rulings against one side or the other. The jury are instructed that there are no intimations. If I express any opinion I will expressly tell the jury so.

By Mr. Payne: I am quite willing for the jury to draw its own inferences your honor with reference to the accusation in the case.

By the Court: I will control this.

By Mr. Payne: Alright.

By the Court: I will control this.

By Mr. Swacker: I don't think that is a proper statement before the jury. There has been no accusation in the case.

By the Court: I am making the statement now. Now I will control this. The government has the power in these Interstate Commerce Commission cases to go and get the records of the defendant and take them away from them. That don't change the rule and then if there is anything in that record that appears that they contend is a circumstance against the defendant, then when they introduce them, they would have to show it was in the same condition that it was when it came into their possession. Now they have admitted that so that ends it.

*Examination of Mr. Otie by Mr. Payne.*

By Mr. Swacker: Has your honor ruled on the motions to strike out this?

By the Court: This evidence on the ground that it is incompetent?

By Mr. Swacker: First on the ground that it is incompetent and irrelevant.

By the Court: Yes, I overrule your motion and you may have an exception.

Q. Mr. Otie, referring to page 174 of Government's Exhibit No. 78, state the date on which the entries were made

and whether the entries on that page were in your handwriting.

A. December 9th, 1916, and they are not in my handwriting.

Q. Is that word Kiefer in your handwriting?

A. No, sir. It is not.

Q. Referring to page 206 of Government's Exhibit 78 state whether the word Kiefer on page 206 is in your handwriting. A. Yes, sir, it is.

Q. Do you see any evidence of erasure after the word Kiefer? A. Yes, sir.

Q. What was the word that was originally written in there? A. Gasoline.

Q. Did you make the entry Kiefer gasoline?

A. Well, I do not know. I am not positive because there is not enough of the word gasoline there to identify it.

By the Court: Now, after you look at it under the glass what do you say about it, your best judgment?

A. It does look like mine.

By the Court: What is your judgment about it, do you think you wrote in there? Is it your judgment you wrote it there or you did not?

A. Why, it is all mine, I guess. All the rest of these figures and things are mine so the chances are that is mine also.

Q. Did you ever remember of making the entry "Kiefer"?

A. Yes, sir.

Q. Was it not your general practice on those cars from Kiefer, to write in "Kiefer gasoline"?

A. It is just a matter of form; sometimes marked Kiefer, sometimes Kiefer gasoline, and sometimes Kiefer gas.

Q. State whether you made tests of the samples from that Kiefer gasoline, and whether the gasoline—and where the gasoline was from which the samples were taken?

A. In tank cars.

Q. What were the numbers of them?

A. 1136, 2016, 1054, 1100, 1232, 1211, 1079, 1763, this is either 168 or 768, I just don't know which, 1602, 1220, and 422, that may be 23, 22 or 23, one or the other.

Q. Did you erase the word gasoline? A. I did not.

Q. Do you know who did? A. I do not.

Q. Referring to page 236, Government's Exhibit 78, the word "Kiefer," at the top of the page, is that in your handwriting? A. No, sir.

Q. Refer to page 258, of the same exhibit. Is the word "Kiefer" on that page in your handwriting?

A. No, sir, it is not.

Q. Refer to page 264 of the same exhibit, is that word Kiefer in your handwriting? A. No, sir.

Q. Refer to page 340 of the same exhibit, is that item Kiefer in your handwriting? A. It is.

Q. State the dates on which those entries were made?

A. March 13, 1917.

Q. State the car number covering those items of Kiefer gasoline?

A. 1021, 242, 1178, 1150, this is another 434, or 444; 1082; here is another, 1365 or 85, and 335, 1006, 1507, 1024, 950, 162.

Q. State whether there is evidence of an erasure after the word Kiefer? A. There is.

Q. What was the entry as originally made? A. Gasoline.

Q. In full, Kiefer gasoline? A. Kiefer gasoline.

Q. Did you write the word gasoline in there? A. Yes, sir.

Q. Did you erase the word gasoline? A. No, sir.

Q. Do you know who did erase it? A. No, sir.

Q. Referring to page 352 of Government's Exhibit number 78, state whether the items there, about the middle of the page, are in your handwriting? A. Yes, sir.

Q. State the numbers of the cars in which that Kiefer gasoline was at that time?

A. 1052, 2014, 2016, 1112, 1272, 1029, 1148, 1068, 623, 614, 621, 1049, 2022 and 251.

Q. Did I ask you about erasing that word gasoline?

A. It has been erased.

Q. Did I ask you the date of the entry?

A. March 20, 1917.

Q. Now, these cars that you have testified to, according to the records, where did they come from?

A. Why, we don't know. I don't.

Q. Well, what does the word "Kiefer" indicate there?

A. It means it came from this way.

Q. It came from Kiefer? A. Well, yes.

Q. It does, all right.

A. When they brought that kind of stuff, we usually marked it Kiefer, but we don't know whether it is from Kiefer or Africa.

Q. Mr. Otey, were you in continuous possession of these books up until October, 1919? A. No, sir.

Q. Did you leave the laboratory in 1918? A. I did.

Q. So that—and these books were left there? A. Yes, sir.

Q. You did not take them with you? A. No, sir.

Mr. Payne: I had intended to offer this book in evidence, your honor. I now offer it. The other one is in.

The Court: Very well.

**Mr. Swacker:** We object to its admission, and move to strike out the testimony of the witness, on the same grounds as before; no effort on the part of the Government to connect up this, and it is not proper at this time.

**The Court:** Very well. Now, in ruling, I will rule it is conceded that this book has been in the continuous possession of the defendant up to the time that it was turned over to the government. With that, I will overrule the objection, and you may have your exception.

**Mr. Payne:** That is all.

**The Court:** We will not have time to cross examine the witness before noon. The jury may separate under the usual instructions and go until 1:45 P. M.

(Whereupon, court took a recess until 1:45 o'clock P. M.)

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AFTERNOON SESSION. 1:45 P. M.

Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following evidence was offered and introduced and the following proceeding had, to-wit:

By Mr. Gann: May it please the court, John S. Douglass is here and the government has released him and the defendant agrees that he may be released. May he be discharged?

By the Court: Very well.

By Mr. Diggs: Before we proceed I have a statement I would like to make to the court. I desire to state to the court that erasure of the word gasoline in the items forming the word Kiefer gasoline in Government's Exhibit 77 and 78 first came to my knowledge before the book was surrendered to the United States authorities at Muskogee for the use before the grand jury. My attention was directed to the erasures and explanation given to me, the erasures were made contemporaneously with the entries, and for the purpose of making them speak the truth and it was not until after the adjournment at noon today that we discovered that they were otherwise made and now for the first time we have information that leads us to believe that these erasures were made by an employee of

the Gulf Refining Company subsequent to the beginning of the investigation by the Government and we now make this statement so the court can be thoroughly informed of the actual conditions and also make it to be used as an admission in this case in so far as it may be pertinent subject to inquiry.

Mr. Chambers: I don't think that is proper at this time. There isn't any question but what that is a matter subject to explanation, but then it is a matter subject to explanation on their part as a defense. I certainly object—you said you were willing to make it as an admission—I don't believe we care to receive that as an admission, if the court please. It is a matter of defense altogether.

Mr. Diggs: I am not offering it to the jury in the trial in this case, but I am offering it to the court, so the court will understand the condition.

The Court: I will exclude that statement at this time from the consideration of the jury.

Mr. Chambers: Will you let me continue this examination for Mr. Payne?

The Court: Very well.

*Examination of the Witness Otey (Cont'd) by Mr. Chambers.*

Q. Mr. Otey, I want to call your attention to page 236 of Government's Exhibit 78, at the top of the page there where it says Kiefer, now, is that in your handwriting?

A. No, sir.

Q. You didn't write that? A. No, sir.

Q. Is there an erasure there? A. Yes, sir.

Q. And what is the word that has been erased?

A. Why, it is the word gasoline.

Q. Whose handwriting is that, Mr. Otey?

A. I do not know.

Q. Are you familiar with the handwriting generally of the employees who perform the same work that you do?

A. I am with one handwriting that is in this book.

Q. You don't know whose handwriting that is?

A. I don't know whose that is.

Q. Who had charge of that book, that is, made entries in it, besides you? A. There were quite a few.

Q. And you don't recognize—you couldn't say as to which one of them it was? A. No, sir.

Mr. Swacker: This is going in subject to our objection and exception.

The Court: Very well.

Q. I want to call your attention to page 264, where it says cars Kiefer, is that your handwriting? A. No, sir.

Q. That is a different handwriting, is it, from the other? A. Yes, sir.

Q. And do you know that handwriting, is that one that you know? A. Well, I think I can identify it.

Q. I wish you would tell us whose that is, and where he is. A. He is here, I think that is Koontz's.

The Court: Do you know Koontz's handwriting?

A. Yes, sir.

The Court: Seen him write it enough?

A. Yes, sir, I am almost positive that is his.

Q. And he is here? A. Yes, sir.

Q. Is there an erasure there? A. Yes, sir.

Q. What is the erasure?

A. You can't tell what it is; it is rubbed down so fine you can't tell what it is. See the ditto marks.

Q. Look through the glass, you can see that there is an erasure?

A. There is an erasure, but it is not enough to tell what it is.

Q. Have you the car numbers there? A. Yes, sir.

Q. Give me the car numbers, will you?

A. 2013, 2010, 329.

Q. Turn to page 236, back to page 236 and give me the car numbers there too, will you please?

A. 2008, 1153, 1620, 368, 953, 1359, 1718, 1055, 328.

Q. Turn to page 346 of that same book, have you got Kiefer there? A. Yes, sir.

Q. Has there been any erasure? A. Yes, sir.

Q. And what has been erased? A. I cannot tell you that.

Q. In whose handwriting is that in? A. I think Koontz.

Q. Let me look, if your eyes cannot tell maybe I can, but there has been an erasure? A. Yes, sir.

Q. What are the car numbers there? A. 1609, 1038, 1206.

Q. Now turn to page 352 of the same book is Kiefer on that page. A. Yes, sir.

Q. What—and what is the words erased after Kiefer?

A. Gasoline.

Q. Now, what are the car numbers there?

A. 1052, 2014, 2016, 1112, 1272, 1029, 1148, 1068, 623, 614, 621, 1049, 2022 and 251.

Q. And what is the date of that?

A. This is March 20, 1917.

Q. Just turn back on page 346 and tell me what is the date there? A. That is March 17th.

Q. And turn back to page 264 and give me the date?

A. That is February 6.

Q. Now turn back to page 236 and give me the date there will you please? A. January 25th.

Q. Now take exhibit 77, turn to page 291, have you got Kiefer there? A. Yes, sir.

Q. Have you got a word erased after it?

A. Well, now I don't know that.

Q. What is your best judgment in regard to it?

A. Well, my best judgment is no.

Q. Is that in your handwriting? A. No, sir.

Q. Whose handwriting is that in? A. I don't know that.

Q. What is the date? A. That is January the tenth.

Q. What is the year? A. 1917.

Q. Page 300. What is the date?

A. That is January 15, 1917.

Q. Is the word Kiefer there? A. Yes, sir.

Q. Have you got an erasure after it? A. No, sir.

Q. Whose handwriting is that? A. I do not know.

Q. You do not know whose handwriting it is in?

A. No, sir, I do not.

Q. I wish you would turn back to page 291 and state the numbers of the cars, will you please?

A. 1136, 422, 1763, 1079, 1054, 1602, 1100, 1612, 1211, 1232, 1220, 168, 2016.

Q. You have stated the date, but just give it to me again.

A. January 10, 1917.

Q. January 10, 1917. Turn to page 324, Ex. 77; have you got Kiefer there? A. Yes, sir.

Q. In your handwriting? A. Yes, sir.

Q. Anything erased after it? A. Yes, sir.

Q. What is erased after it? A. Well, you can't tell.

Q. Well, do you know what you put in after it at that time—what is the date of it?

A. This is January 29, 1917.

Q. What is your best judgment as to what you put in after January 29, 1917?

A. My memory wouldn't go back that far; I might have put gasoline, and might have put Kiefer.

Q. You would not have put Kiefer there, you had Kiefer before? A. Kiefer is there now.

Q. Kiefer is there now, but there is an erasure after Kiefer?

A. Yes, sir, there is, but I cannot say what was erased there, and I do not remember.

Q. And you cannot tell from an examination what was erased? A. No, I cannot see it there at all.

Q. What were the cars, the number of the cars there?

A. 1225, 2027, 1358, 629, 1356, 1243, 1155.

Q. Now, do you know during that time when you were receiving this commodity from Kiefer, that you were entering it on the books as Kiefer gasoline, that was the custom and system?

A. It was not the custom to enter it as Kiefer gasoline. Sometimes we called it Kiefer, sometimes call it Kiefer gasoline.

Q. Where there was an erasure, it was customary to put this Kiefer gasoline?

A. I don't know what was erased.

Q. Was that not customary with you, and have you not been doing it all these years?

A. Sometimes I have and sometimes I did not.

The Court: Where would you write Kiefer gasoline.

A. Write gasoline right by the Kiefer.

The Court: Whereabouts on the book did you designate it as Kiefer gasoline?

A. I don't know just exactly where.

By the Court: I understood him to say sometimes they designate it as Kiefer gas.

A. Sometimes we did and sometimes we just marked it Kiefer.

By Mr. Chambers: I beg your pardon I understood him to say sometimes they marked it gasoline and sometimes just Kiefer.

By the Court: I understood him to say sometimes they marked it just Kiefer gas.

Q. Well, just show us where you marked it Kiefer gasoline. A. Well, I may have to go through two books.

Q. Just show us where you marked it Kiefer?

A. Well, there is one place here they just marked it Kiefer where there is no erasure.

By Mr. Swacker: Look at page 348 in that book.

Q. Have you got Kiefer there? A. There is Kiefer there.

Q. Is there anything after it? A. No, sir.

Q. Is there any erasure? A. No, sir.

Q. What cars are those? A. 1065, 2022, 1068 and 1321.

Q. What is the date of that? A. February 9th, 1917.

Q. Turn to 324.

By the Court: Is there any place on that book where

it is called Kiefer gas; are there any entries calling--other than Kiefer or Kiefer gas?

A. I think there is.

By the Court: Well, look and see whether there is or not. You can go ahead with this witness and he can take the book and come back later with it.

Q. Turn to page 324. The word Kiefer there?

A. Yes, sir.

Q. Your handwriting? A. Yes, sir.

Q. Erasure after it? A. Yes, sir.

Q. What was the word erased?

A. I can't tell what it is.

Q. What does it look to you like under the glass?

A. Well, it is all erased even the blue lines below it is erased. You can't tell what it is.

Q. What is the date of that? A. January 29th.

Q. What year? A. 1917.

Q. All these are 1917 in that book?

A. Yes, no—no, this book starts in 1916.

By the Court: What time in 1916?

A. Why, the first entry is August 14th.

Q. What were the car numbers? A. Of this?

Q. Of that? A. 1225, 2027, 1358, 629, 1356, 1243, 155.

Q. I hand you Government's Exhibit 6 and ask you to turn page 36 have you got Kiefer there? A. Yes, sir.

Q. That your handwriting? A. No, sir.

Q. An erasure after it? A. Yes, sir.

Q. What is erased? A. Gasoline.

Q. What is the date? A. March 9th, 1917.

Q. What are the numbers of the car?

A. 916, 911, 1607, 1610, 1061, 1209, 913, 1155, 1065—now this is either 1211 or 7211, I cannot tell which.

Q. Can you tell under the glass?

A. No, sir, has the top in here and part of it is rubbed out. 7211 is what I suppose it is. 1035, 1505, 1042.

Q. Turn to page 56 is Kiefer there? A. Yes, sir.

Q. In your handwriting? A. Yes, sir.

Q. An erasure after it? A. Yes, sir.

Q. What is the date? A. March 23rd, 1917.

Q. What are the numbers of the cars?

A. 1111, 328, 1064, 218, 1036, now here is one that a question—with a question mark on it; it is entered here as 8024, 1027, 2015, 1229, 1083, 426, 2025, 332, 1502, and 159.

Q. Did you give the date of that?

A. Wait. That 159 don't belong on there; that is different stuff altogether.

- Q. Did you give the date? A. That is March 23, 1917.  
Q. Page 90, have you got Kiefer there? A. Yes, sir.  
Q. Your handwriting? A. Yes, sir.  
Q. Erasure after it? A. Yes, sir.  
Q. What is erased? A. Gasoline.  
Q. What is the date? A. April 4th.  
Q. What are the number of the cars?  
A. 622, 1619, 629, 934, 1611, 1034, 1462, 2020, 2012, 1080, 1237, 229, and 1074. 924 is on there, too.  
Q. Now, that is page 90, is it? A. That is page 90.  
Q. Turn to page 148, is Kiefer there? A. Yes, sir.  
Q. Your handwriting? A. No, sir.  
Q. Whose? A. Why, I think it is Koontz?  
Q. Think it is Koontz? A. Yes, sir.  
Q. Is there an erasure after it? A. Yes, sir.  
Q. What is erased? A. Can't see it.  
Q. Now, that is page 148. What is the date?  
A. That is April 30th, 1917.  
Q. What are the car numbers?  
A. 1950, 1949, 1331, 1952, 2024, 1034, 1954, 309, 1951, 2025, 1953, 1148, 1247.  
Q. Page 236, Kiefer there? A. Yes, sir.  
Q. Your handwriting? A. Yes, sir.  
Q. Erasure after it? A. Yes, sir.  
Q. What is erased? Can't tell what it is.  
Q. What is the date? A. This is June 8, 1917.  
Q. What are the car numbers, June 8, 1917?  
A. Yes, sir, 1740, 2025, 1953, 1968, 1978, 1786, 428, 1948, 1979, 1965, 1982, 1954, 1083.

Mr. Chambers: If the court please, with your permission, I would like to submit certain of these books, that is, the pages, to the jury, so they can see the words, so they can see the condition of the books, if it would be proper.

The Court: Now, I will not permit you to do that, in view of the admission they make, that those changes were made while in their possession.

Mr. Chambers: I did not know but what it might, the jury—

The Court: Why do they want to look at them?

Mr. Chambers: I don't care.

The Court: Explanation of it—I did not admit it then that as a matter of defense, after he objected to it going in, I sustained the objection; but I will not take up

the time of the court to show an erasure that they admit they made.

Mr. Chambers: Go head with the cross examination.

*Cross Examination of the Witness Otie by Mr. Swacker.*

Q. Will you look at page 348 of Exhibit 77, and see if there is any erasure in that instrument?

Mr. Chambers: Is that the one you referred to a while ago?

Mr. Swacker: Maybe it is; there are several there.

A. No, sir.

Q. How does it read? A. Kiefer.

Q. Nothing more there? A. No, sir.

Q. What date is that? A. That is February 9th.

Q. What year? A. 1917.

Q. Now, will you look at Exhibit 78, at page 38, and see if you find any erasure there? A. No, sir.

Q. How does it read? A. Kiefer.

Q. Is there anything there or before? A. No, sir.

Q. What date is that? A. This is October 24th.

The Court: What year?

A. 1916.

Q. Now, will you look at page 196 of that same Exhibit 78, page 196, what do you find there? A. Kiefer.

Q. Is there any erasure there? A. No, sir.

Q. Anything there previously? A. No, sir.

Q. What date is that? A. This is January 6th, 1917.

Mr. Swacker: Let me have Exhibit 79, please.

The Court: Now, who made those entries? Just the word Kiefer? Whose handwriting is that in?

A. I do not know.

The Court: Do you find anywhere they are in your handwriting, where there is not something?

A. I have not so far.

Q. Now, will you look at Exhibit 77, page 300, and say how that reads? A. This is January 15, 1917.

Q. How does that read? A. Kiefer.

Q. Any erasure there? A. No, sir.

Q. The way it was originally entered, just Kiefer, without anything further? A. Just Kiefer.

By the Court: Whose handwriting is that?

A. I don't know that.

Q. You don't know. Do you know what the book is that I hand you? A. Yes, sir.

Q. What is it?

A. Why, it is the records of the distillations over and dry. Distillations will cover it all, there are some long ones and some short ones.

Q. I ask you to look at Exhibit 79 for identification at the entry on March 13, 1917, showing over 79, dry, 348, and likewise look at page 340 of exhibit 78 which your previously identified as one of the items bearing an erasure and state whether the item in Exhibit 79 for identification is the same item and if so how it reads in Exhibit 79 for identification?

A. Why, I think it is. It is under the same date as Kiefer cars that day.

By the Court: Is it the same date; is it the same date and number?

A. There is no number to this. This is an average of the samples taken that day.

By Mr. Chambers: Are those in his handwriting?

A. No, sir, that is not.

By Mr. Swacker: We have made no objection to his identifying anything even though he did not know whose handwriting it was.

By Mr. Payne: I object to this, your honor.

By the Court: On what ground?

By Mr. Payne: On the ground that it is irrelevant and in no way rebuts the presumption raised, simply was the average Kiefer cars, you can show a man made erasures in a number of instances and get the books back for ten or fifteen years and I suppose you can show a thousand instances where erasures were not made.

By the Court: I don't think that it is competent but if it shows another employee in due course called that by some other name and wrote down there, that would be competent.

By Mr. Swacker: That is exactly the purpose.

By Mr. Payne: But Kiefer cars—

By the Court: I don't think it conflicts.

By Mr. Swacker: Only so far as it shows that it was not a practice to call it Kiefer gasoline.

By the Court: What is that, let me see what that book is.

A. That is the record of distillation of our daily tests.

By the Court: I don't think that is competent, I don't think that proves anything. I will let that in as part of the record in the case but I will instruct the jury in my judgment that don't prove anything. I think that all the records that are entitled to go in to show how they kept their business. You can show whether they called it Kiefer gas by some other employee when you wrote it down, that is what I want to see if somebody wrote it down, these are the records of the concern showing how they run their business and they can put them in but I think any of the records except for that purpose, that would be *be* burdening the record.

Mr. Payne: We have other evidence which we will introduce along the line that you suggest.

The Court: They are on their cross examination. I will let that in.

Mr. Swacker: That is all I am trying to put in. I just had it marked for identification, that it might be identified with respect to the time.

The Court: I will let that in, but I will instruct the jury that in my opinion that is not entitled to any weight to prove anything.

Mr. Swacker: May I call your honor's attention to this thing in connection with that, which I think has some bearing.

The Court: All right.

Mr. Swacker: That this book contains a description not of ears, that is the only thing in it that is identified in that fashion. Everything else read gasoline distillate, South Carolina gasoline, or painters naphtha distillate or something of that sort, and my purpose of claiming its relevancy is to show that there was no officially established name used there, and this evidence—

The Court: Here is the point: don't seem to have been any effort to name it in there. Here there is an effort to name it.

Mr. Swacker: That is precisely my object in showing for an absence of a name there was no uniformity of designation.

The Court: These witnesses testified how they made their entries, and under whose direction; that is for the jury to determine, how much weight it is entitled to. If you bring that to my attention, I will instruct the jury

about the pertinency of that evidence, and how much weight, in my judgment, it will be entitled to.

Mr. Swacker: Well, then, may I ask to reserve cross examination of this witness until he may go through those books to see what other descriptions he finds?

The Court: Yes; I think if there are other descriptions shown there, and other names, I think that will be very pertinent to do that.

Mr. Swacker: May he take those exhibits?

The Court: Yes, I will permit them to be withdrawn, to be looked over.

Mr. Swacker: You make take those books, Mr. Oney.

(Witness dismissed)

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And thereupon, O. E. ABEL was produced, sworn and examined as a witness for and on behalf of the Government, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury. A. O. E. Abel.

Q. And you live at Port Arthur, do you?

A. Port Arthur, yes, sir.

Q. You are the assistant superintendent of the plant?

A. Assistant superintendent.

Q. You are the superintendent?

A. One of the assistant superintendents; there are three there.

Q. How long have you been there?

The Court: Of what, now?

A. The refining plant.

The Court: The Gulf Refining plant at West Port Arthur?

A. Yes, sir.

Q. I am handing you some papers, marked for identification Government's Exhibit 80, and ask you if you recognize those papers as being records of the Gulf Refining Company?

A. Well, there are no records kept out at the works.

Q. But what are those, are those the reports that you make to the Pittsburgh office?

A. Well, it is possible the Auditing Department may make them.

Q. Do you recognize that record?

Mr. Swacker: We concede that that is the record.

Mr. Chambers: I don't want a concession.

The Court: What is that?

A. Apparently it is tank car record, car numbers, gallons.

The Court: What do you recognize that as, if you do recognize it?

A. A record of tank car shipments of unrefined naphtha received at Port Arthur.

The Court: Kept by whom?

A. By the Auditing Department.

The Court: Of the Gulf Refining Company?

A. Gulf Refining Company.

Q. Did you ever see this before?

A. I saw it at Mr. Stewart's office.

Q. Is that the only time you ever saw it?

A. I do not remember seeing it—

Q. Didn't you deliver that to the government?

A. No, sir.

Q. Upon a subpoena? A. No, sir.

Q. Do you know who did?

A. I know Mr. Tryon—Mr. Tryon brought some records.

Q. You were with him when he brought them up?

A. Yes, sir.

Q. You saw them? A. No, sir, I did not see them.

Q. Where is Mr. Tryon? A. Port Arthur.

Q. Is Mr. Tryon here? A. No, sir, I have not seen him.

Q. You were with Mr. Tryon when they were delivered to Mr. Stewart?

A. Why, Mr. Tryon brought some records along with him that were in a bundle but I did not know what they were.

By the Court: You were with Mr. Tryon when he delivered the records to Mr. Stewart?

A. I was in the court building but I do not remember opening any of the records.

By the Court: How do you know he delivered records to them?

A. He brought some records along with him that he had in a package, that he had at the hotel, we understood were some records subpoenaed by the government.

Q. You recognize that as a record kept by the auditing office? A. Yes, sir.

Q. Did you help Mr. Tryon get the records together to bring them up here? A. No, sir.

Q. You had anything to do with that? A. No, sir.

Q. Are you—do you have occasion to have anything to do with the record at all?

A. No, sir, I have no connection whatever with the records in the main office.

By the Court: Did you ever see it before today?

A. Mr. Stewart showed it to me.

By the Court: Did you see it before Mr. Stewart showed it to you?

A. No, sir, not this same record.

By the Court: Do you notice that the top portion of that record has been cut off?

A. I could not say it has been.

Q. You cannot tell that it has? A. I could not say.

Q. Have you ever seen then—have you ever seen other records where those reports are made?

A. No, sir, I have no connection with the record keeping system at all.

Q. Let me call your attention—

By Mr. Chambers: Mr. Reporter, mark this as Government's Exhibit please.

(Paper marked Exhibit 81 of the government.)

Q. Do you know Mr. A. D. Morgan? A. Yes, sir.

Q. What is his business?

A. He is local auditor for the Gulf Refining Company, that is he is not now but he was up to thirty days ago.

Q. Do you know his handwriting?

By the Court: Now, what period did that position cover as local auditor?

A. Well, he has been auditor with the company for something like eight or ten years.

Q. He was auditor May 2, 1917? A. Yes, sir.

Q. Is that letter from him, is that letter signed by him?

A. That looks like his handwriting, yes, si.

Q. I wish you would look at the copy attached there, this tabulated statement and see if that is a copy of a portion you can refer by the date of the other exhibit that you were just testifying about—that is an original duplicate, they say?

A. I find a car which is received the same date as the car number on this sheet.

Q. Now, then, I want you—is that a duplicate original? Now I am referring to this exhibit, what is it? Government's Exhibit 81, is this a duplicate original of the other report?

By the Court: Here is what he means by duplicate original. Both copies made at the same time.

By Mr. Swacker: One has three or four blank spaces in it and the other runs continuous.

A. Not being familiar with this record I would have to check it pretty carefully. It doesn't look to me to be the same.

Q. I will ask you to check them, go out and check each item on the two sheets. But before doing that I want to call your attention—

By the Court: That is a question for the jury to determine, what they are. I will let you prove the relationship whether they were in the possession of this company and you can offer them for any purpose and I will let you show them [ ] the jury. Unless he knows as an independent matter. You ask him his expert opinion as to whether one was a duplicate original. It don't make any difference whether they are duplicate originals or not. If they are identical copies and they are records of thi- company they might be admissible if they are for any relevant purpose. Ask him the question and I will pass on it.

Q. I want to ask you if the top of this page received of Kiefer, Gasoline, April, 1917, has been cut off that page and to whether the rest of the two items of the two pages are the same?

A. That appears to be different, the top was not cut off.

Q. Will you say the top was not cut off these papers?

A. That the top was not cut off.

Q. How can you tell that?

A. I see the two sheets are not identical, the spacing is not the same, I would not say they were the same.

Q. You will not say the top has not been cut off of that?

A. It is barely possible it has been.

Q. Is that not a report of the receipts of the Kiefer gasoline for that date, April, 1917?

A. It has no date on the sheet, says, April, 1917, does not give any date.

Q. Do you know where that came from?

A. Never saw that record before.

Q. Do you know where this came from? A. No, sir.

Q. That is what I *refee* to as exhibit—turn to the first page! A. Exhibit 80.

Q. Exhibit 80? A. Yes, sir.

Q. Do you know where that came from?

A. I never saw it before. I should say it is a car record of unrefined naphtha received at Port Arthur.

Q. And reported to Pittsburgh?

A. What disposition was made at Port Arthur I cannot say.

The Court: Is that the practice that they sent a report to Pittsburgh?

A. I am not familiar with the record keeping system. I have no connection with the Auditing Department.

Q. I am wrong. Is not that a Port Arthur record, and is not this the record that is transmitted to Pittsburgh by the Port Arthur office of the receipts of the Kiefer gasoline?

A. Well, not being familiar with the record keeping system, it would only be a hazard, a guess on my part.

Q. Can you tell anything by that letter?

A. Apparently there was a statement forwarded to Pittsburgh, to the Pittsburgh office, by this letter.

Q. Of the receipt from the Kiefer gasoline?

A. Yes, sir, the unrefined naphtha received.

Q. And you don't know whether Exhibit 80 is the statement that is retained in the Port Arthur office, or not?

A. No, sir, I do not.

Mr. Chambers: I think that ought to be detached from this other correspondence.

Mr. Diggs: We object to the gentleman offering papers, except in the matter—I am objecting to the attorneys for the government taking a part of the papers from the files in the connection in which they appear.

The Court: Yes.

Mr. Chambers: We offer in evidence Government's Exhibit number 81, consisting of a letter from A. D. Morgan to Mr. L. S. Haskell, General Auditor Gulf Refining Company, Pittsburgh, Pennsylvania, of date May 2, 1917.

The Court: I don't think these papers are sufficiently identified.

Mr. Chambers: Well, then we will have to have Mr. Haskell.

The Court: If there is any objection.

Mr. Swacker: We have offered to admit them, and Mr. Chambers says he don't want us to admit them. There are present here witnesses subpoenaed by them who do know what they are.

The Court: I just inquire if there is any objection to that being admitted as a record of the Gulf Refining Company?

Mr. Swacker: None in the world.

Mr. Chambers: With the letter.

The Court Very well.

Mr. Swacker: With the letter.

Mr. Payne: I might state, we have subpoenaed Mr. Haskell, your honor—

The Court: Never mind about the statement. Offer the other one.

Mr. Chambers: Now, I offer Government's Exhibit 82. We offer Government's Exhibit numbers 81 and 82.

The Court: I understand there is no objection to either one.

Mr. Swacker: No, sir.

Mr. Chambers: That has nothing to do with these other matters.

The Court: Very well.

Mr. Swacker: There is no objection to the manner of proof, but objection is carried all along to the admissibility of this evidence at this time.

The Court: There is no objection on the ground it is not a part of the records of the Gulf Refining Company?

Mr. Swacker: No, sir, none whatever.

Mr. Diggs: We put it especially on the grounds of materiality and relevancy, without objecting to it as not being the best evidence.

Mr. Chambers: And Government's Exhibit number 83 and 84—is in the month of May, a letter dated June 2d but the exhibit is receipts for the month of May.

The Court: Very well, let it go in and they reserve an objection and an exception on the grounds of relevancy, although they are what they purport to be, that they are not relevant to any issue in this case.

Mr. Swacker: That is the idea, exactly.

The Court: Very well.

Mr. Chambers: We offer Exhibit 80 of the Government.

The Court: It goes in under the same conditions as the other.

Mr. Swacker: Very well.

Mr. Chambers: That is all with this witness.

The Court: The record shows these exhibits are read.

*Cross Examination by Mr. Swacker.*

Q. As far as you have been able to judge of those papers who, if anybody, present at this trial do you think most likely to understand that record and know what it is?

A. I don't believe we have any one here in the Auditing Department.

Q. Is Mr. Shannon here?

A. No, sir, gone back to Port Arthur; was here and released and gone back to Port Arthur.

Q. What is his function?

A. I don't know—At Port Arthur office? Rate clerk.

Q. Rate clerk? A. Yes, sir.

Q. Examine that exhibit further, or are you able to see anything on there that would give you an idea as to whether or not he is the man that handled it?

A. No, sir, there is not, speaking of it in regard to the writing.

Q. Well, does he have charge of the car records or record of cars received? Does he check up the freight bills?

A. Yes, sir, he checks the freight bills.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Do you mean to say that this record was made up by Shannon?

Mr. Swacker: He says he doesn't know a thing in the world about the records; he is just guessing at it.

A. I do not know who made the records.

Q. Do you know who did make it out?

A. No, sir, I do not.

The Court: Who would be the custodian of that record. What special officer or employe of the Gulf Refining Company would be the custodian of that record, in due course?

A. Well, the stock keeping department would possibly look after the receipt of cars and check against the billing. Mr. Shannon would possibly check the rate charged on the shipment, and checking the amount received, et cetera.

The Court: Now, why would that record be made—why would they go to the trouble of making that record, for what purpose would they make it?

A. Well, not being familiar with their procedure in making these records, I could not say.

The Court: Go ahead.

Mr. Payne: May it please the court, if these gentlemen will indicate who they think can identify this, we will issue a fortwith subpoena for them.

Mr. Swacker: We have no more idea than the government, but we will try to find out.

The Court: Now, they have admitted that that record is a part of the record of the Gulf Refining Company, admitted both of those exhibits, and they show what they are, and I do not see why the government wants to know any more about it. I suppose they will try to find out to see so they could get some explanations of it.

Mr. Swacker: And also to show if any explanation were needed, that if there was any such man, that the government has excused him and let him go home.

The Court: I don't think that is a proper comment.

Mr. Swacker: That was the object of the testimony.

The Court: Well, the very fact that the government excused one of these defendant's witnesses is no presumption against them on any question of fact, and especially in view of the admission of the defense, that that is a part of their record.

Mr. Swacker: I mean our inability to make any explanation.

The Court: Well, get him back here on the wire, if you can't get him, I will see that the process of this court—

Mr. Swacker: We can get him back here without process.

Mr. Payne: The redirect is over. That is all.

(Witness dismissed)

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And thereupon E. W. STEWART was recalled for further direct examination, and testified as follows:

*Direct Examination by Mr. Payne.*

Q. Are you the same E. W. Stewart that was on the stand this morning? A. Yes, sir, I am.

Q. Referring to Government's Exhibit number 80, will you state how this record came into the possession of the government?

A. It was brought to Muskogee in October by Mr. Abel and Mr. Tyron, of the Gulf Refining Company, under subpoena for grand jury purposes.

Q. I will ask you whether at the time that that record was received in the hands of the government, it was in pre-

cisely the same condition as it is now, with the possible exception of some little wear and tear? A. It was.

Q. Did these first sheets, say the first ten sheets, have any heading on them at the time that you received those records? A. They did not.

Q. Referring to Government Exhibit 81 I will ask you when this paper came into your possession, the possession of the Government?

A. They were delivered here by subpoena by counsel on the other side taken from the trunk and the papers here are in the custody of the Court.

Q. On what day was it as near as you can recall that that bunch of papers, Exhibit 81 came into the hands of the government in the manner in which you have described?

A. Either on the 12th or 13th of this month, I think on the 13th.

Q. It was after the trial had begun and the jury empanelled? A. Yes, sir, it was.

Q. Had you ever seen those records before, Government's Exhibit 81? A. I had not.

Q. When was Mr. Shannon the rate clerk that Mr. Swacker referred to excused?

A. Either Friday or Saturday of last week on request of the Gulf Refining Company's office.

Q. Shannon was released about five days before you ever saw Government's Exhibit 81, that true? A. Yes, sir.

Q. Mr. Stewart will you state in reference to Government's Exhibit 77 and 78 and 79 the circumstances under which the erasures were discovered?

A. You refer to the books I believe that were put in evidence?

Q. Yes, sir? A. The erasures were discovered—

By the Court: I don't see why.

By Mr. Payne: It has relevancy to these sheets. The connection will appear in just one moment.

Q. Just go ahead Mr. Stewart—

By the Court: I am not going—I will see, the government cannot take up time on things that have already been admitted.

Q. Go ahead Mr. Stewart?

A. During the grand jury proceedings at Muskogee, in October 1919.

Q. Were you examining those books with reference to the counts to go into the indictment? A. Yes, sir.

Q. And the counts in the indictment relate to those entries, Kiefer Gasoline? A. Yes, sir.

Q. That were erased? A. Yes, sir.

Q. Can you state that you noticed that some of these sheets, namely the one for November and December, 1916, and January, February, March, April and May, 1917, had no headings upon them, whereas beginning in June, 1917, there were headings?

A. Why sometime during those proceedings I do not recall just when.

Q. Did you attach any importance—

By the Court: As to the importance that has nothing to do with this. The mental process that worked through his mind that is not evidence here.

Q. After you had discovered that there was no headings on those sheets or rather after you had observed these erasures in the books what significance did you attach to the fact that headings on the sheets were not there?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial.

By the Court: Yes, I sustain the objection. Any significance, what he may have thought and things like that. If he notices that that is competent. He has testified that these records were in the same count. You can show them to the jury and let them see. Now as to what this man thought and revolved through his mind and things like that is not competent and I sustain the objection.

Q. Mr. Stewart, I will ask you to examine Government's number 81, and refer to the statement attached there, covering, apparently, the receipt at Port Arthur, in April, 1917, and will ask you to state on the second page of that record, what it shows to be the billing for that month?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, not the best evidence.

The Court: I will only permit him to do it if he testifies as an expert and has gone through that as a predicate for the convenience of the Court.

Mr. Payne: That is all.

The Court: But it will not be evidence, it is for the jury to look at it and see for themselves.

Q. Have you compared the sheet for April, 1917, in Government's Exhibit number 80, with the sheets showing their billing for the month of April, 1917, in that exhibit?

A. I have, yes, sir, as to the total gallons and the cars on the first sheet of this statement.

Q. Have you made a very careful check of that sheet and

of this sheet and are the entries in each case on both sheets the same?

A. I haven't checked them, car by car, no, sir.

Q. Have you checked them sufficient to say that they are duplicates?

The Court: No, I will exclude that. They are in evidence, and that is for the jury to determine. I will tell the jury that I do not think they are duplicates. They are made with a different machine. One is made with a dark ribbon, and the other by a green ribbon. It looks to me like one was a copy of the other, but I do not believe they are duplicate originals.

Mr. Payne: I might state Exhibit 81 is the original and this is the carbon copy, using a black carbon.

The Court: If you can qualify him as an expert, that he knows, I will let him testify.

Q. Do you know how carbon copies are made? Do you run a typewriter yourself? A. Yes, sir.

The Court: Are you an expert at that yourself?

A. I could not qualify as an expert. I use the typewriter some.

The Court: I will not let him testify unless he is an expert. You can put expert typists on and he can look at one and see whether both were made at the same time, and one is a carbon copy of the other, and if it comes to that, it would be a duplicate original, otherwise the jury can look at it and see whether they are different copies.

Q. I will ask you to hold these two sheets—

The Court: I will not let him testify, he has not qualified as an expert.

Mr. Payne: That is just a matter of common knowledge.

The Court: That is for the jury. You can show it to them.

Q. Let me get this clear, this sheet with the heading on it came to us by subpoena after this trial had started, is that correct? A. Yes, sir.

Q. And this sheet without the heading, was the one that was delivered, one of those delivered to the government at the time of the grand jury proceeding? A. Yes, sir.

Mr. Payne: All right.

The Court: You can pass it around and let the jury see.

Mr. Swacker: If it can be shown to us, we will admit it.

Mr. Payne: Never mind. Let the jury see it.

By the Court: Now we *wre* not going to take up so much time, let's hurry along now.

By Mr. Chambers: Are you through with the witness?

By Mr. Payne: Yes, sir.

By the Court: Take the witness for cross examination.

*Cross Examination by Mr. Swacker.*

Q. Mr. Stewart you made an extended investigation before the grand jury proceedings in connection with this matter didn't you? A. Yes, sir.

Q. You visited the plant of the Gulf Refining Company at Port Arthur, did you not? A. I did, yes, sir.

Q. And you made a great many inquiries as to how the business was conducted there and the form of records that were kept did you not? A. Entries, you say?

Q. I say you made a great many inquiries?

A. I did, yes, sir.

Q. As to their manner of conducting their business and the way the records were kept? A. Yes, sir.

Q. You were allowed to examine the books, Exhibits 76, 77 and 78 were you not?

By Mr. Payne: I object your honor.

By the Court: That he was given access to them that is all, as to what they said to him I will not permit you to show that.

Q. You were given permission to examine and allowed to look at those books, exhibited, 76, 77 and 78 were you not?

A. I never saw those books until they were brought in to the grand jury proceedings at Muskogee.

Q. Well were you allowed to see some such books as those? A. No, sir, no such books were shown me.

Q. Were you shown some books? A. Yes, sir.

Q. What? A. The unloading book kept by Mr. Timmons.

Q. Any other books?

A. No, sir, the other statements I received were prepared by employees of the Gulf Refining Company.

Q. Did you see these sheets, Exhibit 80 there? A. No, sir.

Q. Were you shown all books that you did ask for?

A. I think so; I think so yes sir.

Q. Were you shown the records, indicating—

By the Court: I will let the evidence go this far that he was not refused any record that he asked for.

By Mr. Swacker: Alright, that is all.

(Witness dismissed)

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Thereupon, W. M. POWERS, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Powers by Mr. Payne.*

Q. Where do you live, Mr. Powers?

A. St. Louis, Missouri.

Q. What is your present employment?

A. I am traffic manager of the Indiana Refining Company.

Q. What was your employment prior to that?

A. I was assistant Freight Agent of the Frisco.

Q. Assistant General Freight Agent of the St. Louis, San Francisco Railroad Company? A. Yes, sir.

Q. Where did you have your office? A. St. Louis.

Q. How long did you hold that position?

A. From July 1, 1912, until April 1, 1918.

Q. Mr. Powers I show you government's exhibit No. 85 for identification and will ask you if you identify that letter?

A. I do.

Q. Having been received by you in the usual course of business? A. Yes, sir.

By Mr. Payne: I offer this.

By Mr. Swacker: No objection.

Q. I show you government's Exhibit No. 86 for identification and ask if that was received in the usual course of business? A. Yes, sir.

By Mr. Payne: I offer this in evidence.

By Mr. Swacker: No objection.

By Mr. Payne: I offer this in evidence.

By the Court: Very well, let the record show it was read.

By Mr. Swacker: We want to make a general objection to the relevancy of these as soon as he gets all of them ready to put in, but not to the copies.

By the Court: Very well, Let me see what they are, what the character of them are.

Q. I show you Government's Exhibit No. 87 for identification and ask if you identify that as having been a letter written you and sent—

By Mr. Swacker: We are willing to admit these letters were exchanged between Mr. Powers and Mr. Ellis as of the dates they bear.

A. I recognize that as a copy of our letter.

Q. You recognize that as the file carbon of the letter that you wrote? A. Yes, sir.

Q. Now referring to Government's Exhibit 86 and 87 can you state what commodity item 2546-B of supplement 40 to S. W. L. Tariff 26-T applies on?

A. As I recall it that applies on unfinished naphtha.

Q. Just to refresh your recollection of that I would like to show you a file. Refer to that file and see if your recollection is correct?

A. Yes, sir, according to this file item 2046-B applies on crude unfinished naphtha.

Q. Are you sure that is correct, Mr. Powers?

Mr. Swacker: I think if he has any doubt, we ought to object, because it is perfectly possible to prove the actual tariff, and he can refer to them.

The Court: I suggest you let him go into that and examine the tariff and you might agree.

Mr. Payne: I remember going over this with the witness the other day, and he remembered it as something else.

The Court: That is immaterial about that. There is a way to find out what this is in the tariff. I will exclude all his evidence relative to what that is.

Mr. Payne: Will you not let it go in, with the promise we will show?

The Court: I will let you show it by the tariff.

Mr. Payne: By the tariff. All right.

The Court: Because, if it is material, it ought not to go in on a doubt, when the best evidence is here.

Mr. Payne: The best evidence is right here.

Q. I show you Government's Exhibit 88, and ask you to identify that. A. I do.

Mr. Payne: I offer that in evidence.

Q. I show you Government's Exhibit 89.

The Court: Show it to the other side.

Mr. Payne: They have seen them all, your Honor. I showed this to them in advance.

Mr. Swacker: I am saving time in not objecting to them individually. I intend to object to all of them later.

The Court: All right.

A. I recognize this.

Mr. Payne: Your Honor, these two.

The Court: Before I rule on them, I want you to prove—I want the proof made as to the tariff.

Mr. Swacker: I am not objecting on that ground, but I object on the general ground that they are not relevant or material, but there being—but it being substantial time preceding the oldest count in the indictment.

The Court: Let's see it. The oldest count in the indictment is December 2nd, 1916.

Mr. Payne: Yes, sir.

Mr. Swacker: I believe there are two subsequent to that, 86 and 87 are, but the others are previous to that. No, they are all previous to that.

The Court: Now, before that is competent, you must lay the predicate by showing what that is.

Mr. Swacker: I assume the purpose of the government is merely to show along the line of the other evidence.

The Court: I won't permit this unless you show what commodity they are referring to, what commodity they shipped pursuant to that rate.

Mr. Payne: Your honor, I think that relates more to another phase of it.

The Court: Well, I will hear you.

Mr. Payne: We have shown, I believe—may it please the Court, I anticipate that this is going to be somewhat of an extended argument, and I suggest that the jury be excused for a few moments. I don't want to get any undue advantage.

The Court: Very well the jury may be excused, under the usual instructions.

(And thereupon the jury retired from the court room.)

The Court: Now, proceed. We are not going to have any of these extended arguments. All I want is to get your viewpoint.

Mr. Payne: As an essential element in the case,

necessary to be proved, we must show the intent. The objection as I understand it, is because the letters and what transpired was before the date of the offense. How can it be possible your Honor, to show intent unless we show what happened prior to the commission of the offense.

The Court: No, now you have a letter here. "I want to move ten cars of gasoline from Kiefer to Port Arthur to be handled in our own boats, to move to eastern distributing stations."

Mr. Payne: The witness may be *be* excused until the jury comes back.

(Witness dismissed)

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The Court: I will let you show what they have been moving before this letter. And then I will let you show what they moved right afterwards, if they moved anything, right afterwards, that corresponded to what they called naphtha. I will let this in, but otherwise I won't.

Mr. Swacker: We will be willing to admit, and I assume that it is all the purpose subject to our objection of relevancy, that Mr. Ellis in his correspondence did want them and ask them to publish rates upon, as he called it, upon gasoline previous to that time. We will admit it.

The Court: You have got to prove the intent as well as the purpose. The trouble you have been assuming it is gasoline. The burden is upon you to show that what they billed out as naphtha is gasoline, so don't get away from that in the trial of this case. You have got to prove what they shipped was not naphtha, and you have got to prove it beyond a reasonable doubt, and in addition to that, you have got to prove beyond a reasonable doubt that they wilfully did it.

Mr. Payne: Now, that is just the point to which this line of evidence relates. We have evidence here which shows that back in 1913, if that has not already gone in, we will put it in, the Gypsy Oil Company erected a gasoline plant at Kiefer; that they started shipping gasoline; that they shipped it everywhere as gasoline, beginning in 1913 up until December 2, 1916. All the evidence shows for every purpose it was gasoline prior to that time.

The Court: Now, I have ruled under the condition, I will let you show what the material was, if you can, that they had been shipping as gasoline, and then I will let you show what they shipped as gasoline immediately after they got this rate fixed.

Mr. Payne: Now, may I suggest that the evidence shows pretty clearly that they only have a gasoline plant, nothing else. Now, is it not a reasonable inference that when they only have a gasoline plant, that they can ship only gasoline?

The Court: That is a matter for the jury to determine. You introduced his statement. This statement says, "I want a rate for gasoline."

Mr. Payne: We can show that according to these tariffs, the rate on gasoline at the time the plant was erected was 37 cents. That Ellis—the Traffic Manager of the Gulf Refining Company made a request for a reduction in that rate on gasoline to 33 cents, which reduction the railroad granted, effective April 3, 1914. The 33-cent rate reduction became effective on that date. That later on, he endeavored—

By the Court: Then what he shipped, let him ask—then what he shipped under this rate when he asked for that.

By Mr. Payne: Gasoline.

By the Court: The same stuff you class as naphtha?

By Mr. Payne: Never shipped anything but that.

By the Court: This blended stuff is that what they shipped.

By Mr. Payne: Yes, sir.

By the Court: The only thing this is competent for is to show how they dealt with it, you are going to get at the intent for the whole case.

By Mr. Payne: Here is another phase of it your honor to show that after the 33-cent rate became effective that they made repeated effort to get the gasoline rate further reduced that he asked for a rate of 15 cents as a transit *position* north bound and the carrier refused to put that in.

By the Court: Very well I have told you you must lay a predicate to show how they shipped this stuff, immediately before and after, show the practice of the company of these concerns under the guiding hand of these traffic managers.

By Mr. Payne: Your Honor does not—our evidence now shows that they never have shipped anything but gasoline, they have shipped casinghead gasoline—

By the Court: I told you how I am going to rule on that.

By Mr. Payne: Will your Honor let me say a couple more words to get to the end of my story?

By the Court: Very well.

By Mr. Payne: After the thirty-three cents reduction became effective he made repeated efforts to get the rate on gasoline reduced and having failed he started in with the device of billing this stuff as unrefined naphtha, that is our case, that having made repeated efforts to get the rate reduced and having failed to get it reduced legitimately this device was resorted to to get the commodity transported at a lower rate.

By the Court: I will pass on that when you get to it. I have told you under what methods I will let that in.

By Mr. Payne: We have been under the impression we have already laid the foundation that they ship the same thing all the time.

By the Court: If you have, you have a record here, point it out. I suppose that is what you have the records here for.

By Mr. Payne: Mr. Sweet I believe testified that as far back as May 1916, they shipped the same thing? Is that correct.

By the Court: Well turn to your record.

By Mr. Swacker: I don't know what Mr. Sweet testified to.

By the Court: You had better wait and we will take this up in the morning when you have your record.

By Mr. Swacker: We do admit, we have admitted over and over and over again that immediately *preceding* December 2nd that the identical commodity was shipped

By the Court: No, that immediately after getting the rate changed from 37 to 33 cents that they have been shipping this stuff as gasoline before and then immediately afterwards they continued to ship that—my recollection is your evidence is not specific on that. There isn't any use taking that matter up. Get your record. I mean what I am talking about. You have to point it out. I think I have a recollection of what your evidence is.

By Mr. Payne: Does your Honor recall the evidence?

By the Court: You have got to get your books and show me. There isn't any use killing time this evening. I will give you until morning to come in with your evidence and point it out. Let the jury come back.

By Mr. Payne: Before they come back we have two other witnesses to identify two letters that are very anxious to get away today. They have been here several days and live in Kansas City and want to go home for the week end and I would like to use them this afternoon.

By the Court: The way to use them is to put them on.

W. M. Powers, a witness on behalf of the government recalled.

(Whereupon the jury reentered the court room and took their places in the jury box.)

By Mr. Payne: That is all Mr. Powers.

(Witness excused)

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By the Court: Let me suggest that you search your record and if you haven't got that record you had better issue a subpoena. You might look it up and they may admit it.

Whereupon ROLLA MITCHELL, called as a witness on behalf of the United States, having been first duly sworn according to law testified as follows, to-wit:

*Direct Examination of Mr. Mitchell by Mr. Payne.*

Q. State your full name please? A. Rolla R. Mitchell.

Q. Were you general Freight Agent of the Kansas City Southern Railway Company at one time, Mr. Mitchell?

A. Yes, sir.

Q. How long were you General Freight Agent of the Kansas City Southern? A. About ten years.

Q. When did that period end? A. March 1, 1920.

By Mr. Payne: Mr. Reporter, will you mark these exhibits, 90, 91, and 92?

Q. I show you Government Exhibit No. 90 for identification and ask if you identify that as a telegram received by you in the regular course of business?

By Mr. Swacker: We will admit that it was sent by Mr. Ellis to Mr. Mitchell and received by him.

By Mr. Payne: I offer Government's Exhibit 90 in evidence.

By the Court: Very well. Let the record show it is read.

By Mr. Swacker: I am going to object to its admission on the ground of relevancy.

By the Court: Very well, you may have an exception on the grounds of its relevancy.

Q. I show you Government's Exhibit No. 91 for identification.

By Mr. Swacker: We will admit all three of the papers marked Government's Exhibits 90, 91 and 92 were sent by Mr. Ellis on behalf of the defendant to Mr. Mitchell on the date shown thereon and received by Mr. Mitchell, but we object to the admission on the ground that they are irrelevant and immaterial.

By Mr. Payne: I offer all three of the Exhibits, 90, 91 and 92.

The Court: You can have it identified and I will withhold my ruling on it for the present.

Mr. Payne: That is all at this time with this witness.

Mr. Swacker: There is nothing to cross Mr. Mitchell on at this time, until they get these letters in.

(Witness dismissed)

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And thereupon FRANK C. REILLY was called as a witness on behalf of the Government, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name. A. Frank C. Reilly.

Q. Were you at one time Freight Traffic Manager of the St. Louis San Francisco Railroad Company? A. Yes, sir.

Q. How long had you been Freight Traffic Manager of the Frisco? A. Two or three years.

Q. When did you leave the Frisco? A. December 1, 1919.

Q. How long had you been employed by the Frisco?

A. Twenty-seven years.

Q. What was your position with the Frisco prior to the time you were Freight Traffic Manager?

A. Assistant Freight Traffic Manager.

Q. How long as Assistant Freight Traffic Manager?

A. About three years prior to that time.

Mr. Payne: Mark this Government's Exhibit 93.

Mr. Swacker: We will admit the paper marked Government's Exhibit 93 is a copy of a letter, the original of which was addressed to Mr. Ellis, Traffic Manager of the

defendant, by the witness, and J. R. Christian on or about its date, and forwarded to Mr. Ellis, but object to its admission on the ground of being irrelevant and immaterial.

Mr. Payne: I offer the exhibit in evidence.

Mr. Swacker: It is the same proposition and the same date.

Mr. Payne: No, it is not the same proposition. Let the court see what it is. It is an entirely different—

The Court: Stop this rag chewing. Have you got a reply to this letter, a copy of it?

Mr. Payne: Yes, sir.

The Court: I will not permit that to go in without the reply.

Mr. Payne: They admit it.

The Court: They admit they received it, but don't admit its competency.

Mr. Payne: Observe that the reply is already in evidence.

The Court: You mean you have offered it?

Mr. Payne: I didn't mean that in a technical sense.

The Court: Very well. You can mark them and I will pass on all at the same time.

Mr. Payne: I offer Exhibit 93 in evidence. That is all.

Mr. Swacker: We object, on the ground of irrelevancy and immateriality.

Mr. Payne: Do you have any cross examination?

Mr. Swacker: We reserve it.

Mr. Payne: That is all, Mr. Reilly.

(Witness dismissed)

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And thereupon F. A. TIMMONS, was recalled for further redirect examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Mr. Timmons, are you the same F. A. Timmons that was on the stand previously in this case? A. Yes, sir.

Q. I show you Government's Exhibit number 94, and will ask if this is a statement checked by you from your original record, the original records of the Gulf Refining Company, showing car number, date unloaded, the tank into which un-

loaded, and freight bill number on the various cars there enumerated?

A. They all have my signature on the bottom. They are duplicates of that book.

Mr. Payne: I offer this in evidence.

Mr. Swacker: As showing what?

Mr. Payne: As showing what it shows.

Mr. Diggs: We have consented that that paper, Exhibit 94, can be considered as showing that the facts therein stated, with the same force and effect as if the original books from which they were taken were offered in evidence.

The Court: Very well, I will admit them, but you reserve the right to object to them.

Mr. Diggs: On account of relevancy and materiality, but not incompetency.

The Court: All right.

Mr. Payne: May it please the Court, we hardly know whether to let these witnesses go or not.

The Court: Well I would not let them go. You can not turn your witnesses loose on the theory you won't need them.

Mr. Payne: This is a statement showing for each car in the indictment, the date it was unloaded at Port Arthur—

The Court: They reserve their exception to it, on the ground of its relevancy and materiality.

Mr. Diggs: We admit the statement with the same effect as the books. We stated that in the record.

The Court: Let's proceed. Let's make haste.

Mr. Payne: That is all, Mr. Timmons.

(Witness dismissed)

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The Court: My recollection is that you introduced four exhibits in writing to show the shipments prior to December 2, 1916, and the statement was made, were the shipments made prior to that date? I think that is where your evidence drives to. Go ahead.

And thereupon L. C. LYON was called as a witness on behalf of the Government, having been first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Lyon? A. L. C. Lyon.

Q. Where do you live, Mr. Lyon? A. Pittsburgh.

Q. By whom are you employed? A. Gulf Refining Company?

Q. What is your business?

A. Local auditor, sales department.

Q. How long have you held that position?

A. Trifel over 13 years.

By Mr. Payne: Mark this as Government's Exhibit 95

By the Court: Have you shown that to the other side?

By Mr. Payne: We have made a stipulation about that.

By the Court: Let's see that paper.

Q. Showing you government's Exhibit No. 95 and ask you if that is a statement prepared by you from the books of the Gulf Refining Company?

A. The statement was prepared by the stenographer in my office and under my supervision signed by me.

Q. Is that paper a true transcript of the books of the Gulf Refining Company.

A. It is a transcript of a portion of our record in so far as they relate to these shipments.

Q. That is all the data, that is all that data is a matter of record in your book and these statements here coincide—

By the Court: That is correct.

Q. And correct entries from the books?

A. They are not copies of entries, simply tabulated information giving the date,

Q. Is that what the books show?

A. The order numbers and so on governing shipments that we made.

By the Court: That is a correct statement of such matters?

A. Yes, sir.

By Mr. Payne: I offer that in evidence.

By Mr. Swacker: I object on the ground it is irrelevant and immaterial.

By the Court: Very well, I will admit it and you may have your exception.

By Mr. Payne: That is all.

*Cross Examination of the Witness by Mr. Swacker.*

Q. May I ask you Mr. Lyons is the heading a part of the record or did you put that heading on?

A. That is merely our heading, I think that heading was dictated by Mr. Stewart, I am not sure, at any rate that was not part of the record.

By Mr. Swacker: The part that is part of the record is below the dotted line almost across the page.

A. It is information taken from the record.

By Mr. Payne: I object, that is a written document, he can't alter a written document.

By the Court: Now I will let you prove who dictated that statement there and what position he held.

Q. Who dictated that statement at the top of that sheet?

A. I am not absolutely sure, Mr. Stewart was in my office on the day it was made and perhaps at the time it was dictated; may have been partially dictated by him or wholly by myself.

Q. That is Mr. Stewart of the Interstate Commerce Commission who was on the stand while ago? A. Yes, sir.

By Mr. Swacker: Now that is put in to show what the books would show if the books were here. Certainly that is no part of the books; it is shown that it was dictated by Mr. Stewart by the witness or by them in collaboration.

By Mr. Payne: What do the books show as to how the stock was named?

A. I wouldn't attempt to answer that question without having more papers before me; not from this.

Q. In preparing that statement did you refer to your books on blended gasoline or crude oil or something else?

A. We don't have separate books of record in my office for different products. The information in this statement was taken from our file copies of the invoices themselves.

Q. What did the invoices show the commodity to be?

A. Not having the invoices before me, I *could* not answer that absolutely but the statement says partial statements of shipments of blended gasoline without making it a matter of recollection at all I would say that probably all of these were invoiced as blended gasoline.

Mr. Swacker: Now, I am willing to admit that the invoices were made as blended gasoline, if that is what is sought to be proven by this witness. Now, I object to its admission on the ground of its relevancy and materiality.

The Court: What is it he says he is willing to admit?

The books referred to, that it was invoiced as gasoline? Are you willing to take the admission in the record?

Mr. Payne: Yes.

The Court: Very well, the admission is taken, subject to their objection as to its materiality and relevancy and they have an exception to it.

Mr. Swacker: The grounds being it was way prior to the time involved here.

Mr. Payne: We agreed to the stipulation on the ground that the defendant's counsel said that this statement could be put in, as showing what the books were, and on that promise we did not subpoena the books.

Mr. Swacker: What more do you want? We will admit anything you want that the books show.

Mr. Payne: You made no reservation at the time about the heading.

The Court: Why, this is in writing. Let's see what it is.

Mr. Swacker: We are making no reservations now. More than that, we are admitting the actual facts rather than what the books show.

The Court: Now, they agreed to admit that the books show that.

Mr. Payne: Yes. But now he is trying to say that the books do not show some part of it.

The Court: No, he objects to it on the ground of its materiality and relevancy.

Mr. Payne: He was talking about that heading. If he has gone off of that and onto something else, all right. Now, the purpose of introducing that is two-fold, to show in 1913 and 1914, at the beginning of the plant at Kiefer, they were shipping gasoline, and also to show that it is a commercial product and can be marketed direct from the casinghead gasoline plant.

Mr. Swacker: Now, we will deny the competency of that paper to prove that at all, or the books, so far as that may be concerned, but we will admit that it is a fact that we did ship and sell commercially in 1913 and 1914 products from the Kiefer plant.

Mr. Payne: And how did you sell it, and invoice it as?

Mr. Swacker: And we will admit we invoiced it as blended gasoline. I don't know that is a fact. I am assuming that you are correct.

Mr. Payne: Let the books show, they are pretty good evidence of what the stuff is.

The Court: Very well, that admission may go in the record, and you may have your exception, on the ground of the immateriality, and the irrelevancy.

Mr. Chambers: You made that same admission, only stronger, this morning, on page 266 of this record.

Mr. Swacker: If you want to whittle it down, we will whittle it down.

Mr. Payne: That is all. Any cross examination?

Mr. Swacker: No,—just one thing, yes, sir.

*Further Cross Examination by Mr. Swacker.*

Q. Mr. Lyon, you said Mr. Stewart was in your office making investigations and getting these facts from you?

A. Yes, sir.

Q. Did you give him every particular, every bit of information he called for from you? Did you show him whatever he wanted in relation to your records under your control?

Mr. Payne: I object.

The Court: I think he is entitled to show that. You raised the question that the—you raised the question, tending to offer proof showing they doctored the records. I will not permit them to say what they said, but their attitude when you are seeking that evidence, I think that is competent.

Mr. Payne: May it please the Court, I have no objection whatever to anything going in that is a fact, just so long as we are permitted to show the whole facts. If he is allowed to ask the questions, why shouldn't the government also bring out the full truth?

The Court: It will be permissible for the government to go in and show they demanded the records and they refused them.

Mr. Payne: The jury doesn't understand the situation when an Interstate Commerce Examiner calls on a person with reference to possible violations of the law, they don't appreciate what that means,—

The Court: I have ruled on this. If you want any instructions to the jury about that, you prepare them, or cautions, and I will consider them, but I think it is competent. You have shown here, and they have admitted the records. I might get the records, and if they showed

that, if they offered to do it, I wouldn't let them prove that they went and offered to do it, but if the government demanded—

Mr. Payne: They did not demand.

The Court: Well, if the government requested.

Mr. Payne: The government requested.

The Court: Very well. Say we did that.

Mr. Swacker: Do you dispute the fact that every requirement that the government made—

Mr. Payne: Address your witness, not me.

Q. Did you furnish Mr. Stewart whatever information he asked you for, under your control in the office of the Gulf Refining Company?

A. I can't recall any information now that he asked for that he didn't get.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Do you know whether it is a fact that Mr. Davidson, the President of the Gulf Refining Company, refused to give Mr. Stewart the information that he asked for?

Mr. Swacker: Asked him for.

A. I don't know what Mr. Stewart asked Mr. Davidson for.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Do you know whether Mr. Stewart told Mr. Davidson that he had all the information that he desired?

A. I don't know.

Mr. Swacker: That is all.

(Witness dismissed)

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And thereupon WALTER MILLARD, was produced, sworn, and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name. A. Walter Millard.

Q. Were you ever employed by the Gypsy Oil Company?

A. I was, yes, sir.

Q. In what department? A. Gasoline department.

Q. At what plant? A. Kiefer.

Q. How long were you employed in the Gasoline department of the Gypsy Oil Company at Kiefer?

A. From February 16th to November, 1918.

Q. From February 1916? A. 1914.

Q. To when? A. November 1918.

Q. What was the various positions that you held in the plant, Mr. Millard.

A. Assistant Superintendent and Superintendent.

Q. Did you enter the plant as assistant Superintendent?

A. Yes, sir.

Q. You were assistant Superintendent back in 1914?

A. Yes, sir.

Q. In May, 1914? A. Yes, sir.

Q. During the time that you were in the plant, Mr. Millard was there any material change in the general methods and manner of manufacturing?

A. No, sir, it was all manufactured by compressing methods, gasoline was made there.

Q. From casinghead gas? A. Yes, sir.

Q. Did you have—will you state briefly just what the method briefly of producing your product was?

By the Court: Now that is in the record, that that is a compression plant.

By Mr. Swacker: And always was.

By the Court: Exclusively a compression plant and that they by the system of compression converted the casinghead gas *gas* after they brought it from the wells into the product which the government claims is gasoline. Can you prove by him now there was not any change in that business from what time did you go there?

A. 1914.

By the Court: And continued up to when?

A. 1918.

By the Court: Alright. Was the product shipped from Kiefer and where to?

A. Most of it shipped to Port Arthur.

Q. Was it shipped anywhere else?

A. 1914 it was shipped to *various* places.

By the Court: And also Port Arthur too?

A. Yes, sir.

By Mr. Swacker: By the way I wish to report on an investigation. I was to have Mr. Sanderson make this

morning. We admit so much of the product as was shipped north to destination such as St. Paul was in 1913 and 1914, and 1915 shipped to Port Arthur.

By Mr. Chambers: And the same commodity?

By Mr. Swacker: No, I am not admitting it was the same product.

Q. I intended to ask you if it was shipped to Pittsburgh at all? A. During that time?

Q. At any time? A. Yes, sir, to the Pittsburgh plant.

Q. Was there any material difference in the product shipped to Pittsburgh, and the product shipped to Port Arthur?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and calling for the conclusion of the witness to show if there was any material—if there was let him state.

By the Court: Yes, I think the objection is well taken.

Q. Was the product casinghead gasoline blended with naphtha?

A. During that time?

Q. Well take from the beginning all the way *through*?

By the Court: 1914 when you went there?

A. Yes, sir.

Q. Was the product shipped to Pittsburgh, the casing-head gasoline blended with naphtha through the entire period?

A. Yes, sir.

By the Court: You mean that was the product in 1914, shipped to Port Arthur, too?

A. Yes, sir.

By the Court: During that period shipped the commodity without blend to Port Arthur in 1914?

A. No, sir, all blended.

Q. How about 1915?

A. I do not remember shipping but one car from Kiefer that was not blended, I believe it was one experimental car.

By the Court: Where to?

A. Pittsburgh.

By the Court: Now what was it blended with in 1914 and 1915?

By Mr. Swacker: Percentage of blend?

A. Percentage varied.

By the Court: In what way?

A. Depend upon the vapor tension, mostly.

By the Court: But the blend was naphtha?

A. The blend was naphtha.

By the Court: And it varied in accordance with the vapor tension?

A. The vapor tension and the requirements needed.

By the Court: Was that the way in 1916 too?

A. Yes, sir.

By the Court: 1914, 1915, and 1916?

A. Yes, sir.

Q. It was also blended afterwards it was blended throughout the entire period as I understand you to say? A. Yes, sir.

Q. When you answered my question when I asked you throughout the entire period you understood me to mean throughout the entire period that you were employed in the plant? A. Yes, sir.

Q. How were shipments billed for transportation purposes, prior to December 2, 1916?

By Mr. Swacker: We object on the grounds of irrelevancy and immateriality.

By the Court: Very well, you may answer.

A. Billed it, I believe all billed as gasoline.

By the Court: All billed as gasoline?

A. To the best of my recollection.

Q. How was it billed after December, 1916?

A. As unrefined naphtha.

Q. Did you receive instructions from your superior officers to change the manner of your billing? A. Yes, sir.

Q. What were those instructions?

A. They were contained in a letter I received to bill it as unrefined naphtha.

Q. To bill it as unrefined naphtha? A. Yes, sir.

By the Court: Who did you receive the letter from?

A. W. P. Donovan, the general superintendent.

Q. So that is a fact there was no change in the commodity but only a change in the name? A. That was all.

Q. Did you receive any previous instructions as to how to ship the commodity? A. Yes, sir.

Q. What were those instructions?

A. The instructions were to tell the Frisco agent that I was about to ship it as unrefined naphtha and for him to look up the tariff.

Q. I mean when you went there?

By the Court: When did you have those instructions?

A. Those were a few days previous to December 2, 1916.

By the Court: You mean prior to that?

Q. I mean did you receive any instructions to bill it as gasoline?

A. No, it was being billed when I went there and they continued that method.

By the Court: What has been your observation, Mr. Millard, in reference to the effect of weathering in reference to lowering the vapor tension and lowering the gravity?

A. In what way do you mean?

By the Court: I mean specifically will weathering accomplish those two purposes.

A. Yes, sir, at a loss.

*Mr. Payne:* Q. And the purpose, the same result accomplished by blending and weathering, except that there might be a difference in the loss?

A. The blending and the weathering would make less loss.

Q. You mean the blending would cause less loss than the weathering? A. A little.

Q. How do you mean?

A. Suppose you have it weathered down to a certain vapor tension,—

Q. You mean loss by vapors? A. Yes, sir.

Q. Suppose you had 75 gravity casinghead gasoline, if that were allowed to stand without anything being done to it, would the gravity of it decrease down to 60 in time?

A. Not without a great deal of loss.

Q. I mean, regardless of the loss, that result would be accomplished, is that correct? A. Given sufficient time, yes, sir.

Q. What would you say? A. Given sufficient time.

The Court: It would depend on the temperature, too?

A. And the temperature, also.

Q. In hot weather would it be quicker?

A. Yes, it would lower quicker.

Q. It would lower quicker? A. Yes, sir.

Q. Mr. Millard, was the plant at Kiefer equipped with what is called scrubbers? A. Yes, sir.

Q. Will you explain, briefly, what those scrubbers are, and what the purpose is?

A. They catch any moisture or condensation coming in with the gas before it gets to the compression.

Q. Wait a minute. I don't know whether they understood your meaning. The gas coming from the other plant?

A. From the field.

Q. Did you get the gas by a vacuum method?

A. No, sir, the gas pumps into the plant.

Q. And now was this,—is it a fact that these scrubbers, that the gas first went into, is the scrubbers? A. Yes, sir.

Q. Can you describe briefly just what those scrubbers were like?

A. Just a plain vertical tank, about four feet in diameter, about ten feet high.

Q. Was there anything in them? A. No, sir.

Q. Baffle plates? A. No, sir.

Q. How did the gas come into that tank, at the top or the bottom? A. The center.

Q. Now, where would it go out? A. At the top.

Q. What was the purpose of that arrangement?

A. To catch any condensation of moisture that might come with the gas.

Q. Would it also catch any oil that might be in the gas?

A. Yes, sir.

Q. Or any sand? A. Yes, sir.

Q. Or any other foreign matter? A. Yes, sir.

Q. Mr. Millard, was the plant at Kiefer, did it produce water white gasoline?

Mr. Swacker: I object, unless——

A. Mostly.

Q. Under what circumstances would the plant produce anything but water white gasoline?

A. They—may have been a little oil got in the line from a flowing well and put it off color.

Q. You mean when some of the crude oil should happen to get into the machines, into the compressing machine?

A. No, sir, coming from the field, the gas coming from the field, from the wells.

Q. I don't quite understand you. Will you make that a little more definite?

A. The gas coming from the wells may bring some oil in with it from the oil sand into the plant.

Q. And that might get into the casinghead gasoline and discolor it? A. Yes, sir.

Q. Wouldn't your scrubbers catch it?

A. Not all of it; some times it would get through.

Q. Now, was the stuff water white, generally, or was it generally not water white? I mean, how often would it occur that you would get some off color gasoline?

A. Not very often.

Q. Was it just the result of an accident when you did?

A. Generally.

Q. What did you do with that off color stuff?

A. We generally shipped it by itself. Kept it separate when possible.

Q. Would you ship that in a clean car, or a dirty car?

A. Sometimes clean, and some times dirty.

Q. What is the difference? What difference does it make ordinarily, whether you ship in a clean car or a dirty car?

A. None whatever, except it will keep the clean separate from the dirty gasoline.

Q. You mean by dirty car, a car that was used to transport crude oil or fuel oil?

A. Sometimes we get a dirty car and we have off color gasoline, and we ship it in the dirty car to prevent soiling another one.

Q. Did you always ship, with the exception you have mentioned, ship your stuff in clean cars?

Q. Yes, sir, unless we happened to get dirty cars in.

Q. Did you clean the dirty cars? A. Yes, sir.

Q. State the reasons why you always shipped your product in clean cars?

By Mr. Swacker: He did not say he always shipped them in clean cars.

By Mr. Payne: With the exceptions stated, I don't want to be technical.

By the Court: As a rule.

A. Because I had clean cars there and did not have any dirty ones to ship in.

By the Court: When you had dirty cars there did you ship them in dirty cars or clean them out?

A. Generally cleaned them out.

By the Court: Why did you go to the trouble of cleaning them out, what was the purpose?

A. To keep the gasoline clean.

By the Court: Why did you want to keep the gasoline clean?

A. I was following instructions.

Q. You were following instructions? A. Yes, sir.

Q. Suppose the gasoline got dirty how could that situation be remedied?

A. That would be remedied at the refinery.

Q. Do you know how?

A. No, sir, I am not familiar with the refining end.

Q. On whose instructions were the clean cars provided?  
A. That I don't know.

Q. Who instructed you to use clean cars for the transportation of the stuff?

A. I was not instructed what cars to use, the cars were sent to me.

Q. Did you receive instructions that when dirty cars came in and you should want to ship out your water white product in it you would clean the cars?

A. I did get instructions to clean them generally.

Q. From whom? A. Mr. Donovan.

Q. Now in reference to what you have testified to concerning the cleaning the cars was that true of the whole period that you were there? A. Yes, sir.

Q. Mr. Millard were you also in charge of the Jenks plant? A. Yes, sir.

Q. Was that the same kind of a plant?

By the Court: You mean that you had charge of both plants at the same time?

A. Yes, sir.

Q. Is that the same kind of a plant as the Kiefer plant?

A. A compression plant.

By the Court: They were both compression plants?

A. Yes, sir.

Q. Was it the practice to blend this casinghead gasoline at Jenks? A. No, sir.

Q. Did you ship that undiluted? A. Yes, sir.

Q. How was that billed?

A. Billed as unrefined naphtha to the best of my knowledge.

Q. When was the plant erected at Jenks? A. In 1916.

Q. When did you start to ship from Jenks?

A. That I couldn't tell from my memory.

Q. By the way when was the plant at Kiefer erected?

A. Started some time near the end of 1913 or early part of 1914.

Q. You spoke of losses from weathering and I understood you to say that you weathered the stuff at Jenks?

A. Yes, sir.

Q. Was there much loss there? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. There was some loss? A. Yes, sir.

Q. Generally speaking was the product obtained at Jenks similar to the product obtained at Kiefer? A. Yes, sir.

Q. That is it was water white most of the time?

A. Yes, sir.

Q. On whose instructions, if anybody did you ship the undiluted casinghead from Jenks as unrefined naphtha?

A. If anybody, Mr. Donovan.

By the Court. What is your best recollection as to whether you were instructed to ship?

A. Remember being instructed from Kiefer but I do not remember being instructed to ship from Jenks.

Q. Mr. Millard you referred to some gasoline that was marketed direct from Kiefer and shipped from Kiefer to customers did you not? A. Yes, sir.

Q. How was that billed? A. I believe as gasoline.

Q. State the difference between that product shipped direct and the product shipped to Port Arthur?

A. At that time?

Q. Yes? A. The only difference was in the gravity.

Q. What was the difference?

A. That I could not tell. The different customers call for different gravities in their orders, and the product was made to meet those orders.

Q. Now, is it a fact that the gasoline which you shipped direct to the customers, and sold on the market as gasoline, is it a fact that the only difference between that and what you ship to Port Arthur, was that the gasoline marketed direct was blended with more naphtha?

A. I do not remember the exact amount of naphtha it was blended with. The only difference was in the gravity.

Q. How could you control the gravity? A. By blending

Q. Well, now, suppose, for example, that you had a seventy gravity casinghead gasoline, and wanted to produce a sixty gravity gasoline for the purpose of being marketed direct, how would you accomplish that result?

A. By using naphtha.

Q. By blending the casinghead with naphtha?

A. Yes, sir.

Q. Now, suppose you wanted to get the gravity to, say fifty-eight, instead of sixty; how would you accomplish that?

A. Use more naphtha.

Q. Add a little more naphtha? A. Yes, sir.

Q. Now, was there anything else done to the gasoline that was sold direct besides blending it with naphtha? A. No, sir.

Mr. Swacker: We would like an objection and an exception to all this testimony, on the ground of irrelevancy and immateriality. I just did not want to interrupt him.

The Court: Very well. You may have your exception to it.

Mr. Payne: That is all. You may cross examine.

*Cross Examination by Mr. Swacker.*

Q. You say you put this—when was this stuff sold direct to the customers? A. 1914.

Q. And you say you put it in marketable condition by the addition of more naphtha, or how?

A. It depends on what you call marketable condition. If sold in tank cars—

Q. You meet the particular purchaser's requirements?

A. Yes, sir.

Q. They would specify to you which blend to meet the particular order?

A. No, sir, the gravity would be given. No specification as to the manner of blending.

Q. You would have the specification designating the gravity to meet? A. Yes, sir.

Q. And you would control the blending to produce that gravity? A. As near as possible.

Q. Weren't those all very much lower gravities than the material you shipped to Port Arthur?

A. That I could not state from memory, what the gravity was.

Q. You were asked awhile ago what would happen to weather, if you allowed it to weather long enough, it would evaporate altogether? A. I expect so.

Q. This material is extremely volatile? A. Yes, sir.

Q. And it takes but a short time to evaporate altogether?

A. Yes, sir, some of it.

Q. Suppose you would put it in an open cup, such as used for evaporation tests, how long would it take to evaporate?

A. I don't know. I never run an evaporation test that way.

Q. When you have referred to this as being water white, water white with the naked eye or broken bottle?

A. Naked eye.

Q. You did not put the color test machine on?

A. No, sir.

Q. And you don't know whether it was in fact actually water white? A. No, sir.

Q. You know that there is a machine used and necessary in order to determine whether material is water white, do you not? A. Yes, sir.

Q. Now, is it not a fact that the material also frequently gets discolored in the tank after it has been liquefied.

A. No, sir.

Q. Due to rust or anything of that sort?

A. No, sir; rust won't discolor it.

Q. Well, then, due to the naphtha blending material being discolored? A. Yes, sir.

Q. Now, then, these tanks you call scrubbers, they are in fact not scrubbers in a technical sense? A. No, sir.

Q. Just simply a mechanical contrivance to knock down any liquid or hard matter, such a sand, and if that matter was allowed to go on into the compressor it might knock a piston head out, might it not?

A. Yes, sir, that is the purpose of the scrubber.

Q. The gas is going into a compressor, and if these particles were allowed to go in, it might burst the compressor?

A. The liquid would, yes.

Q. These tanks might be and properly are called separators, are they not?

A. We always called them *meeter* tanks in the plant.

Q. *Meeter* tanks? A. Yes, sir.

Q. You weathered all casinghead whether you blended it or not, didn't you, before blending?

A. Yes, sir, after blending.

Q. After blending? A. After blending.

Q. Did you weather some before *blening* as well?

A. No, sir.

Q. Now you started to say something about having notified the Frisco agent before beginning shipping as unrefined naphtha a few days before the date that you began that you were going to begin describing the product as unrefined naphtha? A. Yes, sir.

Q. How did you come to do that?

A. I was instructed to do that.

Q. You were instructed by whom?

A. Then general superintendent, Mr. Donovan.

Q. To notify the Frisco agent that after December 2nd the product would be billed as unrefined naphtha?

A. Yes, sir.

Q. Now the Jenks plant didn't start shipping until in April, 1917, did it? A. I could not say.

Q. Well, sometime subsequent to December 2, 1916?

A. Yes, sir.

By Mr. Swacker: That is all.

*Redirect Examination.*

By Mr. Payne: Mark that as exhibit 96 please.

*By Mr. Payne.*

Q. Mr. Millard, I show you a bottle containing a fluid and will ask you to state what color you would call that.

A. I could not give the color in this light, unless it was daylight I would not be able to judge it at all. This light is a yellow light.

Q. Is that a better color or not as good a color as you would call water white?

A. That I could not say unless you had the two to compare with. You cannot compare one with nothing.

Q. Will you take it over to the window and see

A. Not unless you can give me something to compare it with.

Q. What do you want to compare it with?

A. Whatever you want to compare it with but you cannot compare that with nothing, you have to have something to compare it with.

Q. I understood you to say you made the color test with the naked eye.

A. Yes, sir, always had something to compare it with. Take water if you want to compare it with water white.

Q. Always compare it with water?

A. Not always with water but something I knew was good color, might be a water white as near as I could get it.

Q. Did you—does casinghead gasoline look about like that?

By Mr. Swacker: I object as being irrelevant and incompetent and immaterial.

The Court: I sustain the objection.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Is it a fact if that bottle was full that color would be different? A. Yes, sir.

Q. Would be darker, wouldn't it?

A. I could not say as to that.

(Witness dismissed)

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By the Court: Now we have only got ten minutes. Have you got any witness you can get through with in ten minutes.

By Mr. Payne: The next one will take some little time. Just before we adjourn I move the court the exhibits referred to a few moments ago be admitted in evidence.

By the Court: I will admit them.

By Mr. Swacker: May we have an exception on the ground of their being irrelevant and immaterial.

By the Court: Yes, let the record show that and let the record show they are considered read.

By the Court: Gentlemen of the jury, I instruct you to begin with that you must not decide the case only under the weight of the evidence and that until after you have heard all of the evidence and the argument and the instructions of the court. A juror is to keep his mind open and in receivable frame and not make up his mind on any particular part of it whatever, endeavor to remember all of the evidence and keep it in mind. You will be permitted to separate under the instructions I have heretofore given you. You may now go until tomorrow morning at nine-thirty. Whereupon the jury retires.

(Whereupon court took a recess until tomorrow morning at nine-thirty.)

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present and counsel for plaintiff and counsel for the defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

By Mr. Swacker: Last night we admitted in evidence correspondence of Mr. Powers, Mr. Reilly and Mr. Mitchell, whose cross examination we had reserved. May they now be recalled.

By the Court: Very well, Mr. Powers may be recalled. Have you made any agreement about the rate as to form 35?

By Mr. Payne: What?

By the Court: Have you made any agreement about the proof of form 35 referred to in one of the letters?

By Mr. Payne: We are going to put our rate man on the stand this morning.

By the Court: Show the rate to the other side and see if you can agree on it. I will do it right away.

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By Mr. Swacker: Call Mr. Powers.

Whereupon, W. M. POWERS, a witness on behalf of the government was recalled for further cross examination by Mr. Swacker.

By Mr. Swacker: We don't intend to touch anything on cross examination of this man with reference to the rate of form 35.

*Cross Examination by Mr. Swacker.*

Q. Mr. Powers, between 1913 and December, 1916, did you have several conferences with Mr. C. B. Ellis, the traffic manager of the Gulf Refining Company?

A. I had several conferences with him, I don't know how many.

Q. What was the general subject of those conferences?

A. Relating to the readjustment of the rates on petroleum products.

Q. From where to where?

A. From points in Texas to Kiefer and Kiefer to points in Texas.

Q. Now, was it originally from Fort Worth to Kiefer and Kiefer to Port Arthur?

A. Originally from Fort Worth to Kiefer.

Q. What products did Mr. Ellis explain to you rate, he desired rates upon? A. On low grade naphtha.

Q. Did he make any explanation to you of the character of rates he considered he was entitled to have on that naphtha?

A. He originally asked for a transit rate.

Q. Will you explain to the court and jury what a transit rate is?

A. A transit rate is a rate that is to cover a portion of a haul on a commodity which we will say originates at Fort Worth, passes through to Kiefer, stops at that point for rehandling and then sent forward to some point beyond Kiefer.

Q. And is there some special principle involved in rate-making to apply to situations of that character?

A. Well, as a rule, the rate effective from point of origin to final destination plus a certain charge for stopping in transit applies.

Q. Well, does the rate from point of origin to point of rehandling, is it lower than the ordinary local rate in such cases?

Mr. Payne: I object, your honor, because that goes to the reasonableness of the rate which cannot be inquired into in this proceeding.

Mr. Swacker: I am not going to the reasonableness. I am merely going to the principle involved, that is all.

Mr. Chambers: It isn't proper cross examination.

Mr. Swacker: They put in the correspondence.

The Court: Well, I think that is proper cross examination. I will confine you in cross examination as to whether or not those rates refer to specific conferences, and I will confine you to the conferences.

Q. These letters that were shown you yesterday and that you identified relate to the subject-matter of the conferences about which I have been inquiring of you, did they not?

A. Yes, sir.

Q. Now, will you answer the question that I asked you previously, that is, if it is not the custom in making such transit rates, to make them lower than the local, the ordinary local rate between those points?

The Court: Now, they object to that. Now, why do you object to that, Mr. Payne?

Mr. Payne: On the ground that under the statute, the rates fixed in the tariff have the binding force of law, and, as long as they remain in force, must be applied. That any shipper believing those rates to be unreasonable has a right to complain to the Interstate Commerce Commission, but if he departs from the established rate, he has committed a violation of law. My objection rests on the ground that we cannot in this case go into the reasonableness.

The Court: Now, let's see, what is the object of this question.

Mr. Swacker: We are not seeking any departure from the tariff rates, but on the contrary that the tariff rates published was published especially to cover this traffic.

The Court: Repeat that.

Mr. Swacker: I am not trying to go into the reasonableness of the rate at all, but simply to show by this witness that the rate that was published effective December 2, 1916, was put in especially to cover this traffic under the circumstances explained to the carriers at that time.

Mr. Payne: We object to that, your honor, on the ground that they cannot go into what the intention of the framers of the tariff was; the railroads published the tariffs and put them out to the world.

The Court: I don't think that the principle that the transit rate is lower than where you ship it and reship it without the transit rate. I do not see the materiality of it.

Q. Well, Mr. Powers, did Mr. Ellis, at this earlier time that you have spoken of concerning rates on naphtha north-bound make any explanation to you of what was proposed to be done with the product when it should leave Kiefer?

A. It was moved from Kiefer to Fort Worth for—rather, Port Arthur, for further handling.

Q. Well, I am speaking now at the time when he was seeking the rate northbound from Fort Worth; did he indicate to you what was proposed to be done with the traffic when it should leave Kiefer at that time?

The Court: Now, they are charged here with mis-billing. Now he can show that in that conversation that he was seeking to get a lower rate, and that he told them that he wanted a naphtha rate. I will permit him to prove that. That would be competent in this case; in that conversation he explained to him that he wanted an unrefined naphtha rate and explained to him that he could ship this commodity under that. I will let you prove that.

By Mr. Swacker: That is what I would like to do.

Q. Will you explain Mr. Powers, will you state what explanation Mr. Ellis made to you?

By the Court: I will let you ask him on cross examination whether Mr. Ellis pointed out to you that if he got a naphtha which would be a reduced rate from the rate on gasoline that he could ship a commodity that he had formerly been shipping as gasoline, as unrefined naphtha, did he tell you that in those conversations, that these telegrams and letters referred to?

A. The question relates to the initial establishment of the rate from Fort Worth to Kiefer.

By the Court: In any of those conversations that those telegrams and letters relate to show him the telegrams and letter.

By Mr. Swacker: The question I have asked him is with reference to an early phase of the situation. If I may change it.

By the Court: I will not permit you to cross examine on any conversations except with reference to the telegrams and letters related to here.

By Mr. Swacker: We will show that this is all one part of one negotiation and that is why I started back in 1914 to show that, it is all one part of the negotiations.

Q. Are you familiar with the contents of the letters you saw here yesterday?

By the Court: Let me have them.

By Mr. Payne: Mr. Swacker will have to point out what he is referring to.

By the Court: Here is one on January 19th, 1915, here is a letter from.

By Mr. Swacker: Christian and Reilly.

By the Court: Sunset Line and the Frisco Line and he says referring to the conversation yesterday morning concerning your application for rates of fifteen cents on naphtha from Port Arthur to Kiefer as a traffic proposition, that is a conversation that occurred on January 18th, that fixes that?

By Mr. Payne: Yes, sir.

Q. Disregarding the previous question I asked you about the situation in 1914 and starting with this letter will you state what the negotiations were and what explanation was made to you by Mr. Ellis of the rates desired for the movement of naphtha, northbound, from Port Arthur to Kiefer and southbound from Kiefer to Port Arthur?

A. Mr. Ellis explained that he had a quantity of low grade naphtha at Port Arthur which it was his desire to move to Kiefer providing the rates would be established that would warrant moving it up there and working it through the Kiefer plant and then moving it back to Port Arthur and then reworking it again and putting it on the market.

Q. Did he explain to you the occasion for taking it back to Port Arthur, the reason or necessity for doing so?

A. It was that it required some further handling before it could be sold commercially.

Q. And did he ask for the establishment of special rates to cover the commodity on that account? A. Yes, sir.

Q. What rates did he ask if any?

A. The first proposition was to establish rates which were effective to Tulsa. There was a high rate effective from Port Arthur to Kiefer, I believe, it was 43 cents.

By the Court: 43 cents on what?

A. Gasoline and everything headed in the western classification under petroleum products.

Q. Which would include naphtha?

A. Yes, sir. Now those rates were kept high from Texas to Frisco, Oklahoma points because there was an urgent demand for reduction. The Oklahoma state rates, rates outside of the state were made lower and the Friscoe Railroad considered its revenue as a whole was coming from Oklahoma on traffic and not from the interstate traffic. A rate was put in from Port Arthur to Kiefer, I believe of 33 cents and the same rate was established from Kiefer to Port Arthur because that was the Kiefer New Orleans rate and the rate from Oklahoma to Texas had been carried on what we call a group basis for many

years because there had been no movement. The Oklahoma refiners could not get into Texas as against the local Texas refineries and the rates were allowed to drift in the tariffs as they were. At that time the freight movement on the line from Sapulpa to Texas, this traffic gave us an opportunity to handle tank cars loaded both ways, something very unusual in the movement of petroleum products, there usually being one hundred per cent empty movements. The tanks move one way loaded and return empty.

The Court: That fixed it so you would have a very small per cent of empties?

A. No empty movement at all under this arrangement.

Q. Well, go on with the proposition the court asked you, as to what he asked you to establish in the way of rates, and also state the basis or justification.

A. Well, I believe that explains the justification for the rate that was established for the rate of thirty-three cents.

Mr. Payne: That is getting pretty—

The Court: Yes. I don't think the justification has got anything to do with it. The reasonableness of it. They cannot violate it and come into a court and join an issue on such a fact, and I will instruct the jury that the reason for the rate has got nothing to do with this case.

Mr. Swacker: I have no idea of arguing that.

The Court: Well, I am instructing them that they will not consider the justification or the reasonableness of the rate. The only thing now is as to the question of intent. Now, they have introduced his letter where he referred to it as gasoline. Now, if there is anything to show that he contemplated and in the negotiations he pointed out to them that they could make an unrefined naphtha rate and they could re-ship it at this, I will let them prove that.

Mr. Swacker: That is just what I want to get to.

Q. Did Mr. Ellis—you stated he made an explanation to you that it was a product of low grade naphtha that was to come up from Fort Worth to Kiefer and that there it would be rehandled and returned to Port Arthur and be further rehandled before it should be marketed. Now, did he continue those representations to you subsequent to the establishment of this thirty-three cent rate in an effort to get you to establish a lower rate than that?

The Court: No, what he said there in that conversation.

Q. What did he say in that conversation?

The Court: January 18th, and in that conversation touching these letters referred to.

A. Well, in the conversation that referred to the rate—

The Court: You refer to that conversation now?

A. Yes, sir. Referring to the rate that was established at Baton Rouge on unrefined naphtha, that rate was proposed, and it was objected to by a number of railroad companies, including the Frisco.

Mr. Chambers: We object, as not being a part of the conversation.

The Court: As to what the Frisco said, under your objection, I exclude. What they want is what he said to you, what in the conversation of January 18th, did he propose a rate on unrefined naphtha of January 18th?

Q. Did Mr. Ellis propose to you—

The Court: Did he propose or ask for a rate?

A. Yes, sir.

The Court: Did he tell you what he could ship under that rate, in that conversation?

A. Said he was going to ship naphtha.

The Court: Go ahead.

Q. Did he make the explanation you have heretofore stated in relation to it?

A. That it was a low grade article to be shipped and treated and re-shipped.

Q. Yes, sir, to Port Arthur to be further finished.

A. I understood that was to be done, yes, sir.

Mr. Swacker: Now, may I ask if he established a rate finally based on those representations?

The Court: No, I will not permit you to prove that.

Mr. Swacker: All right. That is all.

*Redirect Examination by Mr. Payne.*

Q. Mr. Powers, did you ever establish the refining in transit rates Mr. Swacker referred to? A. No, sir.

Q. Was there, as a general proposition, a refining in transit rates on oil?

A. There are transit arrangements on petroleum oil, and it is widely practiced on cottonseed oil.

Q. On naphtha and gasoline, can you point me out a single instance where there is a refining in transit rate, as that ex-

pression is known in the railroad world, that is a transit rate on naphtha and gasoline, whereby you can ship a naphtha and blend it with gasoline and ship out the finished product and apply the through rate from the origin to the final destination?

A. There is such an arrangement in effect in Toledo and Findlay and Lima, Ohio.

Q. Are the rates to and from Kiefer transit rates, is there any such arrangement in effect at Kiefer? A. No, sir.

Q. Do you understand the nature of oils and the different kind of oils, Mr. Powers?

By Mr. Swacker: We object to that, certainly nothing to do with cross examination.

By the Court: I didn't understand the question.

By Mr. Payne: I asked if he was familiar with the different kinds of oils, if he knew the different characteristics of the different kinds of oils.

By the Court: How would that be proper redirect? You first have to show him an expert to go into it.

By Mr. Payne: What I wanted to bring out was that he was not an oil man at the time and relied solely upon the representations that were made to him.

By the Court: Have you had any experience in refining and the production of the refineries?

A. Not at that time.

By Mr. Swacker: That is all.

(Witness dismissed)

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By Mr. Payne: Just a moment please, Mr. Powers, will you take the stand again, please?

(Whereupon, MR. POWERS was recalled for further examination.)

Q. Referring to Government's Exhibit No. 87 you stated yesterday that item 2546-B supplement 40 of Southwestern lines, tariff 26-T applied on unfinished naphtha if I understood you correctly?

A. That is what I gathered from the papers you showed me yesterday.

By the Court: Now, have you since refreshed your recollection.

By Mr. Swacker: I admit now, I see the tariff here it refers to a rate on gasoline southbound from Kiefer and elsewhere to Port Arthur, Texas.

By the Court: Very well.

By Mr. Payne: That is all.

(Witness excused)

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Whereupon, Mr. REILLY recalled for further cross examination.

*Cross Examination of Mr. Reilly by Mr. Swacker.*

Q. Mr. Reilly, with reference to the correspondence you were asked to identify yesterday, I will ask you if in addition to the correspondence you had some oral conferences with Mr. C. B. Ellis of the Gulf Refining Company relative to the subject-matter of that correspondence?

A. Well, I can hardly answer that directly. For three or four years—

By the Court: Now you will be confined to the conversation that the letters introduced refer to. Of course, here, ordinarily a statement is not admissible but when they go and introduce a part of it, when the letter refers to it then the jury are entitled to all that was said in that conversation.

Mr. Payne: Where a letter refers to a conversation?

The Court: Yes.

Q. Have you read that letter now so you understand the subject-matter of it?

A. I don't recall the letter. Mr. Ellis talked to me bearing on the subject-matter of this letter.

Q. Well, was that letter a part of the negotiation lasting over the period of time from 1914 to the end of 1916 that Mr. Ellis had with you?

Mr. Chambers: We object to that, on the ground of immateriality, not the best evidence, the letter speaks for itself.

Mr. Swacker: We are entitled to the whole of the negotiation if they put in a part of it.

The Court: If you can show one letter is a part of a series of letters that was continuous and relates to the same thing, I will let you introduce the whole correspondence.

Mr. Swacker: I think we are entitled to the conferences as well as the correspondence.

The Court: We will see whether the letter refers to the conferences. That will be a matter to come up, and I will pass on it.

Mr. Swacker: I will have to ask the government to produce the original of the letter from C. B. Ellis to Frank Reilly, dated May 16, 1915, or are you willing to concede that this copy may be used in lieu of the original, the lead pencil or pen notations of course, not being on the original.

Mr. Payne: Here is the original.

Mr. Swacker: Will you give this a mark for identification, Exhibit 97 of the defendant?

Q. I show you Defendant's Exhibit 97, identified as Exhibit 97, and ask you if you received this letter from Mr. Ellis about the time of its date?

A. Well, the letter does not indicate I personally received it, but it was taken from the Frisco files. I might indicate just how our force handled these matters. It does not indicate I personally received it.

Q. You mean by that, you did not personally open it up and handle that particular letter? A. Yes, sir.

Q. But that was received in your office and handled in the due course of business? A. Yes, sir.

Q. And under your direction? A. Yes, sir.

Q. I will ask you if that is a part of the negotiations I asked you about a few moments ago, extending over a period of time from 1914 to 1916, with respect to the rates from—between Port Arthur and Kiefer?

A. I imagine it is; it appears to be a part of the negotiations.

Q. Is it not a fact, it is a part of those negotiations?

A. Yes, sir.

Q. Now, there were also conversations in relation to it, oral conferences? A. Yes, sir.

By Mr. Swacker: I would like to offer that in evidence.

By the Court: Does that letter refer to any oral conference?

By Mr. Swacker: It refers to a telegram.

By the Court: They are entitled to have the telegram.

By Mr. Swacker: They have the telegram.

By Mr. Payne: Which one.

By Mr. Swacker: The one referred to in that. In May, 1916.

By Mr. Chambers: The other is to reduce the price of gasoline from 39 $\frac{1}{2}$  cents to 33. This is for the establishment of another rate on another article.

By the Court: This is May 16, 1916—had the unrefined naphtha rate been established then?

By Mr. Swacker: Not to Port Arthur.

By Mr. Chambers: That is the commencement of the negotiations, for the unrefined naphtha rate. The other refers to the reduction of the gasoline rate.

By the Court: That is alright, I think this is.

Q. I show you another paper marked Exhibit 98 for identification and ask if that is the telegram referred to in Exhibit No. 97?

By the Court: Now, when was the unrefined naphtha rate made.

By Mr. Swacker: It was published as effective December 2, 1916.

By the Court: Now this is subsequent?

By Mr. Swacker: This is a request for the publication of it. This is May, 1916.

By the Court: Well, this is after it had already been made.

By Mr. Swacker: Made to other points but not to Port Arthur.

By the Court: The rate had been made by the Interstate Commerce Commission?

By Mr. Swacker: If the court please that cannot be answered exactly accurately. The Interstate Commerce Commission had initiated a rate in 1912, on unrefined naphtha, running from Muskogee to Coffeyville, which had nothing to do with this immediate proposition. Thereafter the carriers had, of their own initiative, published and filed a rate on this product from Oklahoma producing points to Baton Rouge, Louisiana. This letter calls attention to those rates and asks for the rate to Port Arthur.

Q. Is that correct, Mr. Reilly? A. Yes, sir.

By Mr. Payne: May it please the court, we don't mind going into this except it will open up a field which you will hardly ever get through with. Now we could show, we have witnesses here showing that what was shipped from Muskogee to Coffeyville and what was shipped from Oklahoma to Baton Rouge was a very different commodity from that shipped from Kiefer to Port Arthur and the opinion of the Interstate Commerce Commission reported in 23 I. C. C. would clearly show the distinction.

By the Court: I will permit you to introduce the

opinion of the Interstate Commerce Commission when these rates were put in. He is dealing with a carrier to get that in. They become conspirators to violate the law. This might be a two-edged sword. I will permit you to show that if the Interstate Commerce Commission when they initiated the rate from Muskogee to Coffeyville that their published opinion showed what they meant, I will permit you to show that.

Mr. Payne: The Baton Rouge rate, your honor, is not referred to in any decision by the Commerce Commission.

The Court: You opened this up by introducing this Baton Rouge.

Mr. Payne: I did not introduce the last one.

The Court: You introduced the first one.

Mr. Payne: We have no objection to the last letter, but we contend that there were representations that the commodity that was being shipped from Kiefer to Port Arthur was the same commodity as was moving between these other points but the fact was that we can show they were entirely different.

The Court: Get your witnesses here. That representation—where is that representation?

Mr. Payne: It is in that letter.

The Court: In this letter, let me see that.

Mr. Payne: It is not in there in black and white, but it is in there just the same.

Mr. Swacker: I desire to except to the statements of counsel for the government, in the presence of the jury, being argumentative, concerning the construction—

The Court: He is addressing the court.

Mr. Payne: I ask for an exception to the statement of counsel for the government.

The Court: You both stop right here. It says the—it says on the same letter or basis that this product is published in item 32½ what does that mean?

Mr. Swacker: That refers to the tariff—

Q. That, Mr. Reilly, is in reference to the tariff naming rate on unrefined naphtha from Oklahoma points to Baton Rouge, Louisiana, is it not?

A. I think that is what it refers to.

The Court: And Leland 26, item 35, and so on. Now, what others?

Mr. Swacker: One is from Muskogee to Coffeyville, and the other from Oklahoma points to Baton Rouge, is that not the fact?

A. Well, I would not like to testify without the tariffs, but I think it refers back to the publication from Oklahoma to Baton Rouge, and this letter was a request to publish the same commodity from stations on the Frisco to Port Arthur.

The Court: Now, if those two items referred to that, he says on same relative basis as this product, published in item so and so. Well, I will permit you to prove that that item on which this product was shipped was not the product.

Mr. Payne: All right, your honor. Be prepared to - we are prepared to prove that.

Q. Mr. Powers, did you know the precise character of the products moving on the Baton Rouge rates, other than it was a product properly denominated unrefined naphtha?

The Court: Now, do you know? Did you know or go on the representations of the statements made there, or did you know of your own personal knowledge?

A. We followed the statements of the tariff preceding us from the other Oklahoma producing points. Reproduced what was ahead of our line.

The Court: You took the statement what they wanted to put on was the same product these items covered?

A. We did not necessarily take this statement. We were requested to put in a rate on crude naphtha or unrefined naphtha or unfinished naphtha, I do not recall which. We put it in on the regular basis.

The Court: Without any investigation of what it was?

A. Well, your honor, that is impossible. We cannot go out into the field. We don't know what is being shipped. We are hundreds of miles removed from the shipping point.

Mr. Swacker: I would like to offer those two papers in evidence, Exhibits 97 and 98. Now, I have offered those letters for the purpose of explaining the letters already offered in evidence by the government, and as being a part of that.

Mr. Diggs: And not for the purpose of undertaking to show the nature of the product.

The Court: That can go in for all purposes. And I will permit the government to prove, if they can, that the product shipped from Kiefer to Port Arthur was not the

same product covered by these other rates when they were put in. Because this man was traffic manager, he was presumed to know those rates and what they cover.

Q. Mr. Reilly, did your knowledge and conception of the term unrefined naphtha, extend to the point of knowing whether or not there was embraced within that term, naphtha produced either by casinghead compression plants or by a topping plant?

A. I don't think we could or would take into consideration as to how it was produced.

Q. The different methods of production?

A. The different methods of production.

Q. Made no difference to you? A. No, sir.

Q. It was merely a question of was the product unrefined naphtha? A. Yes, sir.

Q. And what was the main question was—the question whether it was finished or unfinished or what?

The Court: I don't think that is competent.

Mr. Swacker: Bearing on the question of the representation.

The Court: Well, the representations speak for themselves. It is in writing. The representations speak for themselves.

Mr. Diggs: We offer it, if the court please, for the purpose of explaining the meaning that the terms used in the letters already introduced by the Government carried to the mind of this witness.

The Court: Well, it is not what he understood. That might be if the Frisco was on trial on a criminal offense; they might show their intent, but they are not on trial here now.

Mr. Diggs: Give us an exception.

By the Court: I don't see any ambiguity about that. It says on the basis of the same commodity.

By Mr. Swacker: We don't contend there is any ambiguity, but it simply goes to the question of the manner of the production of the product without any bearing on the subject at all.

By the Court: He has testified in answer to the question, the question the court put. When you *ased* him to state what it was he illustrated when they put it in as brick that they would not be supposed to ship stone.

By Mr. Swacker: Very well, that is all.

By Mr. Payne: Will you waive the original of this decision. Mark this Government's Exhibit 99.

By Mr. Swacker: Yes, sir.

By Mr. Swacker: If your honor please, I would like to ask the witness one more question.

By the Court: Alright.

*Further Cross Examination by Mr. Swacker.*

Q. Did the degree of the finishing or refinement enter into the question of what might be shipped on that description?

By Mr. Payne: I object, the tariff speaks for itself.

By the Court: The letter speaks for itself too.

By Mr. Swacker: I except.

By Mr. Payne: I offer in evidence copy of the report of the Interstate Commerce Commission in the National Refining Company versus the Missouri, Kansas & Texas Railway Company, report 23, I. C. C., page 527 which describes—

By the Court: Show it to the other side.

By Mr. Swacker: We admit it.

By Mr. Payne: Which describes on page three the nature of the commodity shipped from Muskogee to Coffeyville.

By the Court: (Reading) "The product that was shipped seems to have no commercial designation or trade name; but complainant refers to it as a crude product, one shipper describes it in the bill of lading a crude benzine; the carriers classed it as refined oil. The evidence shows that the crude oil had undergone a skimming process, and that this commodity was one of the two resulting products. The Muskogee crude, as it comes from the well, has too low a fire test to be salable as fuel oil; by the skimming process the lighter ends of the oil are extracted, and the heavier residue become marketable as fuel oil."

"This skimming process is accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part of the oil. The extracted product, though not separated in accordance with any specifications, may, therefore, properly be roughly described as a light end distillant—

By Mr. Swacker: Distillate.

By the Court: Distillate "and that designation will

be used in this report. It was this product that was shipped, and complainant's testimony was to the effect that it had no commercial value except for refining purposes; that at complainant's refinery it was kept separate from the crude oils and refined into gasoline, naphtha, turpentine substitute, and a residuum sold as fuel oil.

Mr. Swacker: Now, I would like, also, to just direct your honor's attention to the statement at the end, directing carriers to ascertain and apply a proper name to cover the product in publishing the rate.

Mr. Payne: We admit, your honor, on that commodity the railroads did publish a rate on unfinished naphtha which was two cents higher than the rate on crude oil between those points.

Mr. Swacker: Now, may I ask, in view of that admission—may I ask Mr. Reilly if the rate which was finally published from Kiefer and Oklahoma points to Port Arthur, was constructed upon the basis of the differential ordered by the Interstate Commerce Commission in that Coffeyville decision, except that owing to the Texas state distillate rate and the Baton Rouge rate it was necessary to exceed the differential ordered by the Commission in that case?

Mr. Payne: I object to that, because that directly relates to the reasonableness of the rate.

The Court: I will sustain the objection to that, but I will permit him to say that in framing these rates, they had that letter and this opinion in mind.

Q. Very well. Will you say that is a fact, Mr. Reilly?

A. In establishing the rate from Kiefer, we had in mind the tariff rate that had been published from Oklahoma and Kansas to Baton Rouge.

The Court: And the decision of the Interstate Commerce Commission?

A. That was carried by the lines originally in publishing the rate to Baton Rouge. If I may be permitted to explain the rate-making basis—

The Court: Now, I will just permit you to state that you had those before you when you did that.

Q. Well, in the establishment of the Baton Rouge rate, you had the Commission decision as a basis, is that correct?

A. Yes, sir.

Q. That was the case, also, as to the Coffeyville rate, established some years prior?

A. I don't recall, the Frisco not being a line between Muskogee and Coffeyville, whether we established that rate.

Q. But in the establishment of the Baton Rouge rate, you had the order as the basis for the establishment of the Baton Rouge rate?

A. The guiding point of the railroads in publishing the rate on naphtha.

The Court: After rates were made, then it was up to the shippers to ship in accordance with them?

A. Yes.

*Redirect Examination by Mr. Payne.*

Q. Mr. Reilly, as a general course of business in the railroad world, is it a fact that the shipper asks for a rate on the particular commodities between particular points, and he names the commodity, is that correct? A. Yes, sir.

Q. For example, a man would come to you, would he, and say I want a rate on brick from Chicago to St. Louis, Do you, as a general rule, make any investigation——

The Court: He has testified that he did not. That is in the record. Didn't you testify to that, Mr. Reilly, that you didn't make the investigation?

A. Not any detailed investigation. Our general knowledge we might know of the necessity for a rate.

Mr. Payne: That is all.

Mr. Diggs: He testified he didn't go on the ground and make investigation.

The Court: He said that if they asked for a rate on brick, he wouldn't assume they would ship stone.

The Witness: Yes, sir.

The Court: And if a refiner asks you to make a rate, you have a general knowledge as to whether they have a refinery, their capacity, and you assume that they will ship what they are asking for?

A. Yes, sir.

The Court: You don't go into details in investigating what they turn out?

Mr. Payne: That is all.

*Recross Examination by Mr. Swacker.*

Q. That is, you investigate what the parties represent to you they want to ship at the time application is made for a rate, but you mean to say that you do not, after the establish-

ment of the rate, go and make a detailed inspection to see whether they shipped that commodity.

The Court: He didn't testify he went and investigated the commodity. They come to him and ask you for rates—they come to you and ask you for a rate on unrefined naphtha. You know they have a plant, you assume they have got what they say. You don't investigate to see whether they have the commodity?

A. No, sir, we take the shipper's statement.

Mr. Swacker: That is all.

Mr. Payne: That is all.

Mr. Swacker: We would like leave later to offer to the court that we don't think it is proper testimony relative to that decision.

(Witness dismissed.)

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The Court: How many more witnesses have you?

Mr. Payne: It will take all day and part of Monday.

The Court: All right, we will hold court all day.

And thereupon GEORGE L. PRITCHARD, a witness on behalf of the Government, having been first duly sworn, according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name. A. George L. Pritchard.

Q. Where do you live? A. Port Arthur, Texas.

Q. What is your employment?

A. Superintendent of the Gulf Refining Company.

Q. Superintendent, or general superintendent?

A. General superintendent.

Q. How long have you been employed by the Gulf Refining Company? A. Sixteen years.

Q. How long have you been general superintendent?

A. About seven years, I could not state exactly.

Q. As general superintendent, did you have general charge of the operations of the refinery? A. Yes, sir.

Q. Do you have charge of the laboratory? A. Yes, sir.

Q. Have you what is known as a continuous treating plant in the Port Arthur Refinery? A. Yes, sir.

Q. Can you describe just how that treating plant is operated, and what results it accomplishes?

A. Well, in the continuous treating plant, we treat naphtha distilled with caustic soda solution, to remove the still odor from the naphtha.

Q. Can you describe that more in detail—you have a battery don't you?

A. Well, we have what we call three towers, and we pump the gasoline in through this caustic soda solution, and then through water to wash it, and then the water settles out and it goes out in the tank.

Q. Is that the only treating process that you give in refining oil? I mean, is that the only treatment that is given to refined oil? A. Oh, no, we treat different ways.

Q. Well, is that the only agitator treatment?

A. No, we treat our illuminating oil in lead lime agitator.

Q. I am not interested in that. Is that a refined oil or a heavy oil? A. It is a refined oil.

Q. How was that?

A. We treat it with acid in a lead lime agitator.

Q. Is there any difference in principle between a continuous treating plant and what is known as an agitator?

A. Yes, sir.

Q. What is the difference?

A. You will have to state that more clearly. I do not understand what you mean.

Q. What I mean is, is there any difference in the result accomplished? A. Yes, sir.

Q. What is that difference?

A. We can refine in an agitator to a higher purity.

Q. Under what circumstances do you put your oil through the treating plant, and under what circumstances do you treat them in the agitator?

A. Well, that will vary. Some times we do not have enough capacity in the continuous treating plant and we put them in the agitator instead of putting them through the continuous treating plant.

Q. What is the fundamental difference in principle between your continuous treating plant and your agitator?

A. One you treat continuously and the other you see in the batch method. Take, for instance, two thousand barrels, that is continuous right straight through.

Q. You mean that in the continuous treating plant oil is going in all the time and going out all the time?

A. That is what continuous means in through and out.

Q. We are trying to explain what batching means, you mean you have to put in a batch?

A. Charge up a batch, a certain number of barrels and apply the chemicals and treat it.

Q. And take that batch out and put another in?

A. Yes.

Q. Now in the agitators what are the different ways of treating the oils?

A. They will vary according to the purity you want. There are a number of different methods.

Q. What is the way you treat your gasoline, in agitators? Yes I am referring to your gasoline produced in the refinery by the distillation of crude oils?

A. Sometimes that is treated in the agitator with acid, all together what it is used for.

Q. All according for what it is to be used for?

A. Yes, sir.

Q. Isn't gasoline always used for the same thing?

A. No. There are different uses for gasoline; gasoline for aeroplanes, gasoline for *fighting* plants, and gasoline used for motor cars and some gasoline used for cleaning purposes.

Q. Gasoline stoves? A. And gasoline stoves.

Q. Those gasolines are treated in different degrees is that correct?

A. In various degrees according to what the market demands.

Q. Now suppose you had a gasoline that had only partially been treated would it still be gasoline?

A. Well according to what it was being used for.

Q. Can you state off hand what tank 838 was generally used for in the last two or three or four years?

A. No, sir, I would not want to trust my memory. A refinery is a big place and I cannot undertake to remember every operation down there.

Q. Do you remember what tank 805 is generally used for?

A. That would be the same as 838, that is all done under the supervision of the foreman in that department.

Q. Did you get typewritten copies—do you get—did you receive typewritten copies of the daily test sheets made in the laboratory? A. Yes, sir, we do.

Q. For what purpose are those sheets sent to you?

A. To see that everything is up to specifications that goes out of the refinery, every shipment, they come into the office and it is turned over to the clerk and he goes over them and then they are turned into my office and to see if there is anything out of order.

Q. From those sheets do you direct with reference to the various operations in the plant? A. Yes, sir.

Q. Is a copy of that statement sent to the Pittsburgh office? A. Yes, sir.

Q. Does the Gulf Refining Company operate tank steamers from Port Arthur? A. Yes, sir.

Q. Do those tank steamers operate lines from Port Arthur to eastern distribution stations?

A. Yes, sir, I believe so.

Q. Where are your eastern distribution stations located to which these boats go?

A. Beverly, Massachusetts, and Bayonne, New Jersey.

Q. Bayonne? A. Yes, sir, and on the Gulf coast.

Q. One to New York? A. Bayonne.

Q. One in Philadelphia? A. Yes, sir.

Q. One to Tampa? A. Yes, sir.

Q. Havana?

A. I will not say that about that, I am not an authority on that. That is out of my line.

Q. You just know that in a general way? A. Yes, sir.

Q. Are most of the products of the Port Arthur Refinery shipped out in the boats?

A. Yes, sir, the largest percentage are shipped in boats.

By the Court: Let the records show that these exhibits introduced on the cross examination of Mr. Powers was read. That makes the record complete. Now you all don't seem to be moving up with the idea of what I said. Now I am not going to be here on the 26th. I am going to Ardmore and hear arguments, it will take two days. One of the lawyers on that case will go on the Supreme Court May 1st, and that will preclude the continuance of that case. In addition to that there is a business matter I set there for that date so if you don't get a move on you will be waiting here while I am travelling around for a few days. Now when I say anything you had just as well proceed on the theory that I mean it. I cannot make you get through but I can recess this court and if necessary have this jury kept together in charge of a bailiff and keep them here and keep you here too.

By Mr. Payne: We are very anxious to get away, your honor.

Q. I show you Government's Exhibits 100, 101 and 102 and will ask you if they are original records of the Gulf Refining Company?

By the Court: I don't know but what that would be a good thing for the jury, the high cost of living and everything their expenses would be paid by the Government, I don't know but what that would be a good thing for them.

By Mr. Payne: I rather anticipate we will get through by the end of the week.

By the Court: Yes, but you anticipate they are not going to draw it out like you are?

A. These are the records kept by the testers in the laboratories.

By Mr. Payne: I offer these three books in evidence.

By Mr. Swacker: I object on the grounds of irrelevancy and immateriality.

By the Court: You show they are part of the records of the Gulf Refining Company?

By Mr. Payne: And made in the regular course of business.

By Mr. Diggs: We will admit they are part of the records.

By Mr. Swacker: We concede they are part of the records of the Gulf Refining Company?

By the Court: Between what dates?

By Mr. Diggs: Between the dates shown.

By the Court: What dates do they show? Look at the first and last page of the book.

By Mr. Swacker: We will take their statement as to the dates. The book I am holding marked Exhibit 101 appears to run from August 13, 1917, to January 31, 1918. The book marked 101 appears to run from September 12, 1917, to January 27, 1917.

Q. Will you state the period that book covers?

A. Government's Exhibit 100, March 31, 1917, to September 10, 1917.

By Mr. Payne: Now is the objection overruled?

By the Court: They are admitted in evidence subject to their objection of irrelevancy and immateriality.

By Mr. Swacker: Exception.

Q. Mr. Pritchett, I show you Government's Exhibit 103 and ask if that is an original record of the Gulf Refining Company?

By the Court: Now show these records to the other side.

By Mr. Swacker: We will concede—

By the Court: Why take up the time?

By Mr. Swacker: We admit they are records, if they will give the dates we will admit the dates.

By Mr. Payne: February 3, 1918, to September 30, 1919, I offer that in evidence.

By the Court: It may be admitted with over the same objection on the ground of relevancy and immateriality.

By the Court: In the early part where the words relevancy and competency was used from the phraseology in which the word competency is used here it means—

By Mr. Diggs: It is never used here in the sense of this not being the best evidence.

By the Court: That is understood here that the word competency as it is used, is not meant that it is not the best evidence because in some jurisdictions the word incompetent don't raise those questions and I noticed they were used loosely in here.

By Mr. Swaeker: We don't dispute the authenticity of the records.

By the Court: But I notice the words competent is used here very loosely and I thought I would mention that to have the record straight.

Q. I show you Government's Exhibit 66 that was introduced in evidence yesterday and ask you to look at the item on top of page 72 first line, it is a fact that this book shows that that car or cars referred to here is shipped out as gasoline on this order number shown here—according to the book?

A. I don't see the book dailys but I imagine that is the way I would interpret it.

Q. Mr. Pritchard, do you—is it a practice in the refinery to have simultaneous pumping from two tanks?

The Court: You mean pumping from two tanks at the same time?

A. Yes, sir, we pump from two pumps at the same time on our tank steamers.

Q. And is that also true of tank cars?

A. I suppose so sometimes, yes, sir.

Q. Now, refer to the test record for that day, and state whether the record shows that the gasoline in the car referred to there in the first item was pumped simultaneous from tank 805 and tank 838?

A. I could not do that unless you had the pump book; it shows that. This is just a laboratory record, and I don't know whether this is correct or not.

The Court: What does that show?

A. It shows 805 and 838, but the pumping record would be the only authentic record of that.

Q. Refer to tank 838 and state what was in that tank that day. A. Gasoline.

Q. And tank 805?

A. 805 is not there by itself. It is in combination with 805 and 838 on that date.

Q. Is that the same date? A. That is the same date.

Mr. Swacker: Do you have anything to do with those books?

A. I very seldom see them.

Mr. Swacker: Do you understand how those books are kept, the entries made in them?

A. They are kept by the inspectors in the laboratory. My report goes in, in typewritten form.

Mr. Swacker: You operate from your report?

A. I operate from my report, yes, sir.

Q. Refer to page 68 and state if tank 805 did not have gasoline in it, state what the book shows was in that tank on that date.

A. It shows gasoline.

The Court: He is not swearing independent of the book.

Mr. Swacker: Well, does the book show that the tank had gasoline, or is simply the word "gasoline" written opposite tank 805?

A. Gasoline dittoed opposite tank number 805.

Mr. Swacker: Were these books kept under your direction, or under the direction of the chief chemist, or whom?

Mr. Payne: I am examining this witness.

Q. As a matter of plain common sense, Mr. Pritchard, wouldn't you, wouldn't you infer from this record that gasoline was in that tank on that date?

A. That would be according to the specifications.

Q. I am asking you what this book states.

A. I would have to know the quality.

Q. I am asking you to state what this book shows.

A. That indicates gasoline.

Mr. Diggs: If the court please, we ask to have excluded the witness' answer what the book indicates.

The Court: Yes, just what the books show. Now, what is on the book, if the book shows tank 835, but that has been gone over.

Mr. Payne: We want to bring out another point.

The Court: Well, point it out. That is already in, that they entered them up and run the tanks 805 and 838, that was described yesterday and the day before.

Mr. Payne: I haven't quite made my point clear.

The Court: You can assume that is proof, and travel along the line. That book was introduced yesterday, you referred to it, and that was all referred to, according to my recollection.

Mr. Payne: This particular matter, your honor, was not.

The Court: Well, go and ask him the particular matter.

Mr. Payne: All right.

Q. I will ask you whether it was a practice in the refinery to mix gasoline with painters' naphtha by pumping from the painters' naphtha tank and the gasoline tank at the same time into boats and into cars, the boats and cars being shipped out as gasoline?

A. We have done it, in accordance with specifications and special tanks.

Q. Haven't you done that frequently?

A. I would not say frequently?

By Mr. Payne: You can see—

By the Court: How many times?

A. Judge that would be a hard matter.

By the Court: How many times did you do it a week?

A. May not do it sometimes in a week, sometimes twice a week, and maybe sometimes three times a week.

Q. In loading the boats? A. Yes, sir.

Q. How many gallons would a boat—

A. 50042 gallon barrels.

By the Court: 50042?

A. That is the capacity of the boats.

Q. Sometimes you would do it two or three times a week?

A. If we find it necessary sometimes to expedite the loading of the boat, we would blend it just the same as we would do at the refinery.

By the Court: Take the naphtha from one tank and pump it into the boat and the painters' naphtha?

By Mr. Payne: Yes, sir.

By the Court: From another tank would you pump them in simultaneously?

A. Pumped them in together and have the laboratory inspect the blend according to our specifications controlling at the laboratory and they were always inspecting the shipping tanks.

By the Court: Did you put anything else in except the blend.

A. Yes, sir, that is all.

Q. And shipped it on the boat? To Bayonne and Philadelphia as gasoline?

A. Yes, sir, after it passed specifications.

Q. Shipped it as gasoline? A. Yes, sir.

Q. When you pumped simultaneously would there be a connection of the pipes to the two tanks? Or would both of the pipes run from the tank to the boat or would they join at some place in route?

A. Sometimes we are equipped different, we can run both pipes to the boat or run right *right* into the pump.

Q. I see you can run stuff from two tanks into the pump and that mixes it up and send it along?

A. Yes, sir, and you can take separate pumps and use separate lines.

By the Court: In making that kind of a blend in naphtha, painters' naphtha, did you use both ways?

A. Sometimes we did that.

By the Court: The reason I asks the question is to push things along.

By Mr. Diggs: We have no objection.

Q. Now isn't it a fact, Mr. Pritchard, that the cars that you received from Kiefer and other Oklahoma points from casinghead gasoline plant upon arrival at Port Arthur would be put into tank 805?

A. I would not say that, it may be put in the other tank, it is according to the conditions.

Q. What other tank?

A. 838, 857 and number of other tanks around there that could be utilized for it.

Q. Now lets take 805 as an example, suppose it does go into 805 now is it a fact that stuff is pumped from that tank to your boat simultaneously with the stuff with 838 on the same date, frequently that your Kiefer cars go into that tank?

A. I didn't get that?

By the Court: Let me read the question.

(Question read by the reporter.)

A. That would all be according to what the material was in the tank.

Q. Has not that occurred frequently?

A. I would not say positively, I do not know.

By the Court: What is your best judgment?

A. Perhaps it has, that is my best judgment.

By the Court: Now he says his best recollection is it has. Now you have got your records on those specific points before the jury. Is not that enough.

By Mr. Payne: I think so.

Q. Now isn't it also a fact that on the same day Kiefer gasoline would be dumped into tank 805 some stuff from tank 805 would be pumped to the boat and stuff from tank 838 containing painters' naphtha would be pumped to the boat simultaneously from those two tanks and on the same day painters' naphtha out of tank 838 would be shipped to Kiefer?

A. I would not want to make that statement.

By the Court: What is your best recollection.

A. I think it is.

Q. In other words isn't it a fact that the very same stuff—

By the Court: Now he has answered that, he says that according to his best recollection he thinks that is so but he is not positive about it. I don't think any man could be positive about a thing like that.

Mr. Payne: I was going to ask him about the general practice.

Mr. Swacker: Ask him about the facts.

The Court: You asked him if he knew anything like that. I would not believe him.

Mr. Payne: He is general superintendent.

The Court: I would not have much respect for his evidence if he had not said that is his best recollection.

Mr. Payne: I want to ask him if it is not a fact the same painters' naphtha is used for blending at Port Arthur with the stuff that comes from Kiefer after it is sent north down to Kiefer.

The Court: I will permit that. You asked him if the same naphtha known as painters' naphtha is not used for blending and for making gasoline shipments to points by steamers or otherwise as was shipped to Kiefer for blending purposes.

Mr. Swacker: May I ask that painters' naphtha be eliminated? Nobody here has defined it and everybody has a different notion.

The Court: If he knows, ask him the question, ask him that.

A. What is painter's naphtha?

The Court: Yes, sir.

Q. Heavy naphtha for the purpose of treating.

The Court: What is designated as painter's naphtha? What is it?

Q. What is known down there at the plant as painter's naphtha? A. It is about 54 gravity,—

Q. Just a minute. A. I don't understand.

The Court: The witness is all right. He understood you asked him what it meant. Go ahead. Repeat the question over to him.

Q. My question is, which we want you to answer, is whether you don't ship the same naphtha to Kiefer for blending with your gasoline as you blend it with the stuff from Kiefer, after it arrives at Port Arthur?

A. The same stuff, but always mixed with the refinery gasoline.

Q. It is the same stuff?

A. It is always mixed with refinery gasoline.

Q. You have tank 838, for example, and you ship stuff out of that tank to Kiefer, and, at the same time, when the stuff gets back from Kiefer, you blend it with more stuff from tank 838?

A. In addition to refinery gasoline.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. When you blend the three commodities that Mr. Payne has been asking about, that is the naphtha called painter's naphtha, which is the material that was shipped northbound to Kiefer and used to blend with casinghead, plus the blended casinghead that came down from Kiefer, you say in addition to that, you universally blend it with refinery gasoline?

A. Always with gasoline.

Q. That you invariably, whenever you do so blend, blend with refinery gasoline? A. Yes, sir.

Q. What would be the object in using this so called painters' naphtha to blend the blend which had arrived from Kiefer with refinery gasoline, what would be the purpose of doing that? A. In order to meet specifications.

Q. What would be the effect of doing it on a particular blend you would otherwise have blended—the ordinary practice is to blend the unrefined naphtha with refinery gasoline?

A. Yes, sir.

Q. And there is added the so-called painter's naphtha, also? A. Yes, sir; it varies.

Q. What is the object of such addition, what is the effect?

A. To make it meet specifications.

Q. That is the object. What is the effect? What does it do? How does it affect the blend otherwise if it was not done? Does it reduce the gravity or end point?

A. Reduces the gravity to a certain extent and if your overpoint is too low, it may perhaps raise that.

Q. How would it affect your end point, dry point?

A. If you mixed it to meet specifications, it would meet 428 dry.

Q. I mean, what does it do? Does it raise or lower the dry point. A. It raises the dry point.

Q. The addition of the socalled painter's naphtha, to a blend of otherwise unrefined naphtha and refinery gasoline, tends to raise the dry point, is that correct?

A. Yes, sir.

Q. And when it is done, the reason of doing it is in order to meet the specifications, is that correct? A. Yes, sir.

Q. How does it affect the recovery that will be shown by the distillation test? A. It helps the recovery considerably.

Q. What do you mean by helping the recovery considerably?

A. If specifications call for 95 per cent., what we call in a distillation of the painter's naphtha, you can help it.

Q. That is, you can raise the recovery to 95 or towards 95?

A. Yes, sir.

Q. What is commonly denominated naphtha fraction, explain that to the court? A. Naphtha fraction is done—

Q. Without regard to particular measure of gravity, or anything of that sort, what is it, as related to crude oil?

A. It is the portion containing the gasoline and naphtha and benzine.

Q. Is it of those so-called lighter hydro-carbons of crude oil which are lighter than the ones from which kerosene and heavier products are made? A. Yes, sir.

Q. Now, what is the first operation in the process of refining at that refinery, and if that varies from refineries generally, distinguish it.

A. Why, I think we run pretty close to most other refineries. The first operation we charge the crude oil into the still, and then you get your naphtha cut.

Q. Well, can you get the naphtha cut?

A. Distilled over to a point cut in making about 52—

Q. This so-called lighter hydro-carbons are naphtha fractions that are used ultimately to make gasoline, benzine and naphtha? A. Yes, sir.

Q. Are called first cut and distilled first and come over first? A. Yes, sir.

Q. And separate off from the balance of the crude oil?

A. Yes, sir.

Q. What happens to the naphtha fraction after it is thus first cut off?

A. General refining practice is to pump into the agitator and treat it.

Q. Pumped into the agitator and treat it? A. Yes, sir.

Q. The whole mass of naphtha fraction is taken and agitated? A. Yes, sir.

Q. What is the character of the treatment accorded there?

A. It is given a sulphuric acid treatment.

Q. Given a sulphuric acid treatment?

A. That is the practice, purified before distilled.

Q. What is the object of the sulphuric acid treatment?

A. To remove the impurities from the naphtha.

Q. Remove the impurities—you remove the impurities of the naphtha fraction? A. Yes, sir.

Q. What do you do with this mass next? Is it still all in one mass

A. Yes, sir, it is generally—it is a general refining practice to keep it in one mass and then go to the steaming still.

Q. What is done with it? A. Steam still it.

Q. What do you mean by steam still it?

A. Distill it with steam and make it in to various cuts.

Q. What does that do?

A. Divides it into—divides it up, fractionates it into various units.

Q. Fractionates it into subdivisions of the general mass?

A. Yes, sir.

Q. Those subdivisions go into—all go into the commodity to produce the naphtha, benzine and gasoline?

A. Those are the terms.

Q. What are the terms naphtha, gasoline and benzine as you have used them?

A. Benzine is the heavy product; gasoline is the lighter fraction; and benzine the intermediate; and naphtha the heavy.

Q. Gasoline is one of the lighter subdivisions, it is the lightest? A. Yes, sir.

Q. The product called benzine is the intermediate subdivision? A. Yes, sir.

Q. And the product called naphtha is a lower subdivision? A. That is what we term it down there.

Q. And those are the names, the names as you would apply them and they are applied to the finished product?

A. Yes, sir.

Q. They are the names of the finished products of this process of refining that you are now describing?

A. The gasoline and naphtha.

Q. And benzine?

A. And benzine. They use those terms, yes, sir.

Q. Naphtha is also a name that applies to all of them as a body, is that true? A. Yes, sir.

Q. And is that true, both as to in their state while in the process of refining, and after they are refined, that naphtha is a name applied to the whole family?

A. It varies; some people call it naphtha and some people call it other things.

Q. Well, what else do they call it?

A. Some people call it gasoline, some call it naphtha, and some people call it benzine.

Q. These three finished products some people call one of these particular names; gasoline, naphtha and benzine, and others call the group of them as finished product, naphtha?

A. Yes, sir.

Q. And aside from that, while in the process of refining, they are called naphtha, are they not? A. Yes, sir.

Q. Now, after this steam stilling which has separated the three subdivisions of the naphtha fraction into the material that is to make gasoline, benzine and naphtha, what is the next step that is taken with the product, that is, to become gasoline? A. It is finished by treating.

Q. It is finished in a sense of distillation?

A. No, we are through distillation.

Q. What is the next step?

A. It is given a chemical treatment.

Q. What kind of a chemical treatment is that?

A. That varies; it is according to what is required.

Q. Then what is next done?

A. It is pumped out into the tank.

Q. Now, then, is there occasion to blend it in order to meet specifications to make it a completed product?

A. Sometimes it does not meet specifications and it is necessary to blend it.

Q. Now, then, is there any particular manner of refining utilized or done with respect to the refinery gasoline with a view to making it able to accommodate as a blend the unrefined naphtha which you get from Oklahoma?

A. Yes, sir, we make a better quality so it will blend, better meet specifications.

Q. That is, you exceed specifications on the refinery product in order to enable it to accommodate by blending the Oklahoma product? A. We have to.

Q. Well, is that process of blending a common incident of refining in refineries generally?

A. It is considered one of the processes of refining. It is always done by an experienced man, and you can't do it without you have—

The Court: You mean that blending the two products is refining?

A. Yes, I figure it is, Judge.

Q. That is, the case, for instance, do you know anything about refining sugar? A. Not to talk about.

Q. You would rather stay on petroleum?

A. I would rather stay home, yes.

Q. You mean, when you go and blend casinghead with naphtha, that would be refining?

A. If it doesn't meet specifications.

The Court: I mean, would that be refining?

A. That would be a process.

Q. A process of refining, you mean. A. Yes.

The Court: Here is the point in my mind. It says now unrefined. Now, unrefined, that is used in the sense that it is not a finished product. If it has been refined at all, can you say it is not refined.

Mr. Swacker: A product is unrefined only until it is refined, if there is any refining done in connection with it.

The Court: He says the blending these two products here at Kiefer, that that is a process of refining.

Mr. Swacker: Yes, partially.

The Court: How can you say it is unrefined if it has gone through the process of refining?

Mr. Swacker: We say anything is unrefined until it is refined, refining is the producing finished operation.

The Court: Unrefined means there in the sense that it is not a finished product, and was that the intention?

Mr. Swacker: Absolutely. That is exactly what these letters show; that it was not finished.

Q. Mr. Pritchard, is any of the product refined at the Port Arthur Refinery a refined product until it is finished?

A. No, we don't consider it so.

By the Court: Now you mean finished is when it is put in a state to meet the specifications of the purchaser?

A. Yes, sir.

By the Court: And then anything might be gasoline as you term it gasoline, for one purchaser and not gasoline for another purchaser according to the specifications requested?

A. Yes, sir.

By the Court: This unrefined naphtha that comes to Port Arthur is that ever treated throughout the period of time it has been coming there, been shipped in that state without further blending with the refined process?

A. No, sir, we have never shipped it out in the state it was received there and if we did I think we would be criminally negligent because it is not in a fit shape to be put on the market.

Q. Why, because of its danger?

A. Too volatile. It's dangerous.

Q. Does that blend that blending that is done in Kiefer eliminate the necessity of the other refining process?

A. No, sir, we have to refine it when we get it down there.

Q. It is necessary to refine it further by further blending when it is shipped down there? A. Yes, sir.

Q. What is the purpose of the degree of blending that is done at Kiefer?

A. Well, I am not familiar with the process up there but I understand it is done to meet the laws of vapor tension.

Q. Aside from any laws regarding the vapor tension what other function does it perform with respect to the casinghead?

A. I don't understand.

Q. What function does it perform with respect to the casinghead?

A. I am not familiar with that part of the branch of the plant.

Q. Does it have the effect of—

By the Court: He stated he did not know.

By Mr. Swaecker: Very well, I will leave that.

Q. Can this heavy naphtha be used as a holder or container or conveyance of casinghead gasoline? A. Yes, sir.

Q. How does it operate in that way?

A. It takes up this material and makes it safer to handle.

Q. Well aside from making it safer to handle what does it do with respect to containing it or holding it?

A. It absorbs it.

Q. And keeps it in liquid solution? A. Yes, sir.

Q. That is prevent it going back to the state of gas again?

A. Yes, sir.

Q. Now then in the course of refining what we may designate straight run gasoline, that is designation used around a refinery is it not?

A. Yes, sir, straight run refinery gasoline.

Q. And what does apply to?

A. Gasoline made from the crude run of the still.

Q. Now in that process does there sometimes arise, a vapor which fails to condense? A. Yes, sir.

Q. What do you call that vapor? A. Gas.

Q. Still gas? A. Still gas, yes, sir.

Q. In fact does that arise all the time in the course of this distillation?

A. Well it is according to what you are distilling.

Q. When you are distilling naphtha fractions which are a good part of the body of a crude, a light crude, well what are the circumstances in which it arises?

A. Well when the still first goes over it forms gas and that is what we call still gas.

Q. And that does not condense in the ordinary process?

A. No.

Q. Well now what do you do with that? A. Compress it.

Q. What does that material while in a gaseous state resemble in connection with unrefined naphtha, is it the same thing as casinghead gas before casinghead gas is condensed?

A. I would not want to state.

Q. It is extremely volatile hydro carbon of the naphtha?

A. Yes, sir.

Q. You say you compress that and that compression produces what?

A. A high gravity gasoline, a very high gravity.

Q. What did you call it?

A. We call it compression gasoline.

Q. That is not a finished product at that time, is it?

A. No, sir.

Q. Is that product substantially the same product as the unblended casinghead or unrefined naphtha which you received from Oklahoma distinguished as these lighter hydro carbons the same as the unblended unrefined naphtha that you receive from Oklahoma? A. Unblended?

Q. Yes? A. Yes, sir.

Q. And it is of about the same over and dry point?

A. Practically the same.

Q. And distillations will prove about the same?

A. Practically the same.

Q. Now what do you do with that material?

A. That is blended with refinery straight run gasoline.

Q. Is it a refined product until that is done?

A. No, we don't consider it so.

Q. Well is it ever shipped as gasoline? A. Never.

Q. Is it ever sold as gasoline? A. As gasoline?

Q. Yes, to be used as gasoline? A. No.

Q. Can it be used as gasoline? A. No- that I know of.

Q. Why, what would be the trouble about it not being usable as gasoline? A. Too dangerous.

Q. What other reasons?

A. It wouldn't meet specifications.

Q. Regardless of specifications would it be usable; has it any qualities about it that make it unusable for gasoline purposes, for instances in a motor car?

A. I wouldn't use it in a motor car, not that light stuff.

Q. Could it be used generally for gasoline purposes without further treating it, distilled gasoline? A. The light stuff?

Q. Yes, sir? A. No, sir, would have to be blended.

Q. Would have to be blended before it could be used?

A. Yes, sir.

Q. Now you have frequently made and do you frequently make and have made distillation tests of shipments of unrefined naphtha coming from Oklahoma, do you not?

A. Yes, sir.

By Mr. Swacker: Mark these defendant's exhibits 104, 105 and 106.

Q. I show you three papers marked defendant's exhibit 104, 105 and 106 and ask you if those are distillation tests performed by you on unrefined naphtha, unblended, unrefined naphtha, blended crude, unrefined naphtha, painter's naphtha, distillate, cracked naphtha, benzol, *straight* run gasoline, and blended gasoline, the first two items being the product received from Oklahoma?

A. Yes, sir, that is correct.

Q. That shows the distillation tests? A. Yes, sir.

Q. Performed on that product? A. Yes, sir.

Q. And shows the results on that? A. Yes, sir.

Q. That is characteristic of that product, these distillation tests are characteristic of that product?

A. Yes, sir, they cover and qualify on it.

Q. And the item straight run gasoline on those tests is the material you have spoken of that is produced in excess of specifications in order to accomodate by blending the Oklahoma product, is that correct? A. Yes, sir.

Q. These were performed on the characteristic stuff that you get from Oklahoma? A. Yes.

Q. Have you ever known of any recoveries on that material to show on distillation as high as the lowest specifications that you know of? A. No. It is always greater.

Q. The lowest specifications of gasoline that you know of requires a greater recovery than any of this stuff I have shown, is that correct? A. Yes, sir.

Mr. Swacker: I would like to offer those in evidence.

The Court: Have they been identified?

Mr. Swacker: Yes, he has identified them as having been distillation tests of characteristic material.

The Court: Are those from the files of the Company?

Mr. Swacker: These are papers that he had made up.

Mr. Payne: I must object to these unless it is shown that they relate to some of the cars in the indictment.

The Court: Yes, I don't think they are competent unless it relates to the cars.

Q. These were performed some time subsequent to May, 1919? A. No, these were later than that.

Q. That is what I say, some time later than that?

A. Yes, sir.

Q. They were performed later than October, 1919?

A. Little later.

Q. October, 1919? A. Yes.

The Court: He can testify as an expert what he thinks about things, and what investigation he made, but unless these papers are a part of the records of that institution—

Mr. Swacker: Here is all I want to do by this paper, and it will just take time to do it, I want him to testify to the characteristics of the unrefined naphtha received at Port Arthur between December 2, 1916 and March, 1919, the dates embraced in the indictment by those terms.

The Court: He can testify—

Mr. Swacker: He just simply testified these were the characteristics of the material.

The Court: Well, if they object to it, I will have to exclude it, because it is not competent.

Mr. Swacker: I will just have him testify as to the characteristics.

Q. Mr. Pritchard, what is the average gravity of the unblended, unrefined naphtha received during the period December 2, 1916 to March, 1919?

A. Unblended, unrefined naphtha?

Q. Yes? A. That runs about 78 to 80.

Q. From Kiefer, Jenks and Drumright?

A. Let's see. I have got some records here.

Q. Well, from Jenks?

A. From Jenks, about 77 or 78 gravity.

Q. That is unblended, unrefined naphtha?

A. Yes, sir, and we have had some as high as 80.

Q. Now, what is the average color test on it?

A. It will average about 24 to 25.

Q. What is the average vapor tension on it when it arrives at Port Arthur? A. That is from where?

Q. From Jenks: We are dealing altogether with Jenks now. A. About eight.

Q. About eight? A. Yes, sir.

Q. What is the per cent of evaporation in a fifty cubic centimeter open dish four inches in diameter at six hours at atmospheric temperature? A. Average about 65.

Q. About 65? A. Yes, sir.

Q. Were you speaking of the fifty cubic centimeter?

The Court: No, he can not,—

Mr. Swaecker: All right.

A. That is from Jenks, you say?

Q. Yes, sir?

A. It will average 65 per cent of evaporation.

Q. In what time? A. Six hours.

Q. In what kind of a dish?

A. 50 C. D. open dish, fifty cubic centimeters open dish.

Q. What temperature? A. Atmospheric temperature.

Q. What is the average over point?

A. It will average about 82 and 88 to 89 and 90.

Q. What will there be over the 221 degrees Fahrenheit?

A. It will vary from 70 to 83 per cent.

Mr. Payne: I object, your honor. The question here is whether the particular cars in the indictment were gasoline. He is stating the average over point and the average gravity.

The Court: He is proving the character of the material that they shipped and how it was blended. I suppose they are laying the predicate for expert evidence.

Mr. Payne: I have just one point I have in mind, your honor. There has been testimony here that by adding a little additional naphtha to the gasoline, compressed at the casing head plant, you lower the gravity down to the point called for by the specifications of the purchaser. Now, it may be that perhaps there were cars that were shipped here between these points that had such gravity and the over point and may be others that had higher gravity and lower over points, and when we average them all up I can not see how we can arrive at an intelligent result with respect to the particular cars in the indictment.

The Court: Now, how are you going to prove, you

haven't offered any proof of the gravity in those cars; where did you introduce any proof as to the gravity of the cars?

Mr. Payne: We haven't yet.

The Court: Go ahead, I will let him answer.

Q. What per cent. would average over 221?

A. From Jenks?

Q. Yes, still at Jenks?

A. About 75 per cent., Jenks.

Q. What would average over 275 Fahrenheit?

A. 80 to 83.

Q. At what point would it average dry?

A. Dry, 240, 265, somewhere around there.

Q. What recovery would it average? A. 80 per cent.

The Court: Now, then, this average here would only be admissible to rebut that. I will let it in for the present.

Q. What do you say average recovery from Jenks would be? A. About eighty per cent.

Q. About eighty per cent. you say? A. Yes, sir.

Q. Now, that distillation that I have just used with respect to that test is the distillation test prescribed by the United States Army and Bureau of Mines, is it?

A. Yes, the Bureau of Mines.

Q. As being the specifications of gasoline? A. Yes, sir.

Q. Now, referring to the blended material from Drumright, what is the average gravity on that during this period of time you have been asked about? A. From Drumright?

Q. Yes? A. It will average from 83 to 84.

Q. No I am talking about the blended material from Drumright, the blended unrefined coming from Drumright, what will that average in gravities?

A. The blended about 77 gravity.

Mr. Payne: I object to the statement of these averages unless it is shown the witness has made the tests on these cars. That is he cannot pick out a particular car and say this is the average.

By the Court: No he would have to make them on all of them.

Q. All these cars that arrive are tested under your direction and for your information?

A. They are tested by the chemist from the laboratory for my information.

Q. And you do and have to keep yourself informed concerning the characteristics displayed by these distillation tests?

A. Yes, sir, I am kept informed.

Q. So that when you speak of the average here, that it is a matter of the current daily knowledge of the business, is that correct.

A. Yes, sir, it will average that in the general run.

Q. Which will embrace all of the cars received at the plant between December 2, 1916 and March 1919?

A. I say it would, yes, sir.

By Mr. Payne: I still object because it has not been shown that he examined the records here.

By the Court: Now have you examined them and made the calculations or are you just testifying as to average by your recollection.

A. No, judge, I watched pretty closely, lately I haven't watched it very closely but this is just what we average.

The Court: I think that is competent.

Q. Have you prepared with you a paper showing the distillation test based on such average?

By the Court: Did you make the comparison in reference to it yourself?

A. Yes, sir, I made the test.

By the Court: Did you go back and see each one of them take the test as to each car and make the paper from that?

A. No, not personally, a man got the sample from the car and brought it in, I don't go out and get the samples.

By the Court: That is alright, that is in the due course of business. If it was his duty to bring it in.

Q. It is in the due course of business to keep and be informed concerning the distillation of those tests of the product coming from Oklahoma? A. Yes, sir.

By the Court: How did you get the average, have you gone back and taken every test, each test of each car and put them down and averaged them?

A. No, sir.

Q. How did you get it?

A. I judged it the way it was going.

By the Court: That is not competent.

By Mr. Swacker: I think it is competent testimony to testify to the characteristics of this material.

By the Court: Yes, but it is not competent to testify to the average unless he has gone back and taken the test and knows what the average is.

By Mr. Swacker: If he knows as a matter of information from day to day in the due course of his duties.

By the Court: This is merely an impression, a matter of recollection, it would just be his recollection.

By Mr. Swacker: I think all testimony is recollection.

By the Court: I would consider that very weak evidence as to what that was. A man could be very easily mistaken if he had gone over a course of a year or a year and a half and now his impression as to these cars as to what would be an average, that would be mighty weak evidence.

By Mr. Swacker: It is the basis on which the refinery is operated, this man's knowledge and information of the subject.

By the Court: They can sit down and figure that out to an absolute certainty from the books.

By Mr. Swacker: They would if it was necessary.

Q. Is it necessary as superintendent of this refinery for you to have figured out the actual averages of the distillation tests or is it sufficient for you to know how to discharge your functions there as the general superintendent of this refinery by seeing from day to day and thus informing yourself of the distillation tests and the characteristics of this product?

A. I am—

By the Court: It is not necessary for you to function there in your duties to know what the average distillation is, is it?

A. No, sir.

By the Court: Your duty is to know as to the tank so you will know what is that is in that car and in making the blend whether or not it will comply with the specifications?

A. Yes, sir.

By the Court: I don't think this witness is qualified to testify to that.

By Mr. Swacker: I think we can show the characteristics of the material by anyone who has knowledge of it.

By the Court: Yes.

By Mr. Swacker: The average could be made up by an auditor, he can say I checked this up and have made the average and here it is. It would be assigned to an expert on figures.

By the Court: Yes.

By Mr. Swacker: I will change it from average then to some other basis.

By the Court: Very well.

Q. Mr. Pritchett do you have a knowledge of the characteristics commonly incident to the product coming to Oklahoma from Port Arthur? A. Yes, sir, I do.

Q. How did you gain that knowledge?

A. By working with it and getting tests on it and knowing the qualifications of it. I can pretty near tell you what it will be.

By Mr. Payne: I move you the average figures by this witness stated, be stricken out.

By the Court: Very well the motion will be sustained.

By Mr. Swacker: An exception.

Q. May I ask the witness as a matter of brevity if the figures you gave as stated average distillation test comport with your knowledge of the characteristics common to this material?

A. Yes, sir.

By Mr. Swacker: May I ask now that it be restored, not as average but to his knowledge of the characteristics to save going over in detail again.

By the Court: If there are no objections.

By Mr. Payne: That seems to me to be doing the same thing indirectly.

By the Court: Yes.

By Mr. Swacker: Yes, because the objection is not substantial in any way. I believe that average in one way will be only a matter of computation as the Court suggests.

By the Court: I will permit him to testify that he knows it was shipped there and he knows it was as low as so and so and as high as so and so. That is as far as he can go.

By Mr. Swacker: Very well.

Q. Then going back to the Jenks material, what is the maximum and minimum gravities you know of?

A. About 80 to 77, 77 to 80 in Baume gravity.

Q. That is unblended material? A. Yes, sir.

Q. Now what does the vapor tension range?

By the Court: That is testify to a fact, that is I know it has been this low and this high.

A. 8 pounds.

Q. What is the low and what is the high that you know of.

A. It has been as low as 7 and as high as eight and one-half.

Q. Now then what has been the range of overpoints?

A. It will vary according to the time that we receive it.

Q. What will be the lowest overpoint and what is the highest overpoint to your knowledge?

A. It varies from 75 to 95 or 100.

Q. What will be the distillation of it at 221 Fahrenheit, the highest and lowest that you know?

By Mr. Payne: I object unless the witness knows of his own knowledge, he is referring to some paper.

By Mr. Swacker: He is not referring to that paper but another one.

By the Court: I will permit that it may be a paper that he is entitled to refer to.

Q. What is that paper?

A. Distillation tests of the different materials.

Q. When was that made up? A. December 6th, 1919.

Q. What period does it cover or tests—

A. Two weeks.

Q. Two weeks test of material when? A. What.

Q. What material when? A. Two weeks test.

Q. Of material received when? A. December 6th, 1919.

By the Court: Was that a record kept and that test made up in due course and a record there—it may be that—that record might be permissible to be introduced in evidence. I will permit any of the records of this concern that were permanent records that were made in the due course of business—the government has introduced some of them and if they are material they can introduce all of them or any part of them that will relate to this case.

Q. Was this paper gotten up for you in the due course of business? A. They made it up from time to time.

Q. In the usual course of business? A. Yes, sir.

By the Court: He says it was made in December, 1919.

Q. And this is 100 cubic centimeter?

A. 100 standard English test.

Q. Have you any of those of a previous date to this?

A. No, I haven't.

Q. You mean you haven't any here?

A. I don't believe we have any previous dates.

Q. A similar statement to this can be readily compiled from those sheets there?

A. I think the chemist could if he took his distillation tests. Of course he don't try vapor tests every time.

Q. Does the use of this enable you in any way to refresh your recollection concerning your experiences of the time previous to this—

By the Court: Why can't you have them go out and take the books and agree on it? Just let these experts take these records and figure them up and whatever they will show give it to the jury.

By the witness: We wouldn't have the records during that time.

By the Court: You would not have the record to compile according to this?

A. No, sir.

By the Court: Pick out any two weeks or any three weeks. You mean you haven't all the items on this sheet?

A. No, they are kept in different departments.

By the Court: You can take such of the records as you have here. The parts that relate to the characteristics that you want to introduce in evidence. Anything further?

By Mr. Swacker: That is all.

By Mr. Payne: Just one or two questions, your honor.

*Redirect Examination by Mr. Payne.*

Q. You spoke of compression or still gas as high gravity gasoline, is that correct?

A. Very high gravity, yes, sir.

Q. And you said, I believe, that that was practically the same as the stuff that came from Kiefer?

A. Practically the same in regard to physical conditions, yes, sir.

Q. So that the stuff that came from Kiefer was high gravity gasoline? A. It didn't meet specifications, no.

Q. I am not talking about that.

The Court: Was it high gravity gasoline?

A. I don't consider anything gasoline except what meets specifications.

The Court: Well, would it be high gravity gasoline as generally termed in the refinery world?

A. Yes, sir.

Mr. Payne: That is all.

*Recross Examination by Mr. Swacker.*

Q. But is isn't called gasoline, is that correct?

A. No, not what I term—

The Court: What you term gasoline is when it is finished in accordance with the specifications of the purchaser?

A. Yes, sir.

The Court: So you don't call anything gasoline until it meets the specifications of the man that buys it for the market?

A. Yes, sir.

The Court: Then there would be different kinds of gasoline wouldn't there?

A. Yes, sir.

The Court: One man would have one specification and another man another. Then how would you distinguish the different kinds of gasoline of that kind?

A. The different specifications called for at different billing points.

The Court: What would you call it?

A. Might call it South Carolina gasoline, motor gasoline, what we used to call Bohme gasoline.

Q. So now, if this commodity that was shipped from Kiefer to Port Arthur, if it met the specifications of the customer for gasoline, then you would call that gasoline, if it did not, if it did not call for any further treatment to meet it?

A. If it did not require any further treatment to make it meet the specifications, it would be classified gasoline.

Mr. Payne: That is all.

*Further Examination by Mr. Swacker.*

Q. And did you ever know of any of this material from Oklahoma that would meet any specifications of gasoline?

A. No, sir, did not.

Q. Can you say,—

The Court: You mean the specifications of those that were ordering it, is that what you mean?

Q. I mean the specifications you ever heard of, of gasoline? A. No, sir.

Q. Of any specifications of any gasoline you—used for any purpose as gasoline?

A. Not that I know of, no, sir.

Q. Never knew of any specifications which this material would meet? A. You are talking now of,—

Q. Of the Oklahoma product, without further treating, either in the way of blending or some process of refining?

A. Nothing I would recommend it for.

Q. You say you know of no specifications in your knowledge in your experience, specifications that this material would meet?

Mr. Payne: I object to that cross examination.

Mr. Swacker: This is on cross examination.

Mr. Payne: He practically made him his witness.

Q. None of this was ever used or shipped as gasoline, is that correct?

A. That is correct, never shipped as gasoline.

Q. Every bit of it that ever came there had to have something done with it before it could be shipped or used on any orders that you had and shipped as gasoline?

The Court: You did not try to use it, you did not inspect it to see whether it would meet the specifications, just unloaded it in the tank?

A. I think you will find the laboratory records of the test.

The Court: I know, while it was tested, you unloaded it in the tank?

A. Yes, sir, and made tests of the tank, and blended it from different tests we got.

The Court: Anything further?

Mr. Swacker: That is all.

Mr. Payne: That is all.

(Witness dismissed.)

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The Court: Have you any further witness that you can use in about ten or fifteen minutes?

Mr. Payne: Yes, sir, one.

The Court: All right. Put him on.

And thereupon S. H. OTEY was recalled for further redirect examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Mr. Otey, have you checked up your daily test records of shipments northbound from Port Arthur to Kiefer and Drumright?

A. I did as to Mr. Stewart's copy that he had there.

Q. That is you checked up this statement prepared by Mr. Stewart with the record?

A. Yes, sir.

Q. And you found the statement to be correct according to the record, except you couldn't locate two items, is that correct?

A. There is more than two.

Q. Is there more than two you couldn't locate?

A. Yes, sir; two there and one here.

Q. You have located all that you have put a pencil check mark beside and those that are not checked you were not able to find? A. There are some marked "X".

Q. You had better point out the cars you couldn't locate.

A. I will mark X on all I couldn't find. I guess they are here all right. There is one he has marked that is marked in the book "Not shipped."

Mr. Payne: I offer this in evidence.

The Court: Any objection?

Mr. Swacker: Let's see it. We make no objection to this going in with the same force and effect as the books themselves might go in, but we object to its competency otherwise.

The Court: You object to it on the ground of being irrelevant and immaterial?

Mr. Swacker: Yes, sir, and to prove the contents.

Mr. Payne: That is all it is intended for, as a tabulation of the book.

Mr. Diggs: We admit the items there checked by Mr. Otey appear upon our books and may be treated with like force and effect as if the books were introduced in evidence.

The Court: Yes, but you claim it is not competent because irrelevant and immaterial.

Mr. Diggs: Yes, sir, and as not tending to prove any issue in this case.

The Court: Very well, you may have your exception. Any other witnesses you can get through in ten or fifteen minutes?

Mr. Payne: No, he is the only one; the others will take half an hour or so.

The Court: How many more witnesses has the government got?

Mr. Payne: We have at least six more witnesses.

The Court: Now, the way you have been going, that will take two or three days to get those witnesses.

Mr. Payne: No, these witnesses won't.

The Court: Now, I am not going to let you introduce those witnesses covering anything that has been introduced here.

Mr. Payne: They will all cover new matters that have not been gone into.

The Court: Now, how many days does the defense think it will take them? Have you any idea how many days it will take to get in your evidence?

Mr. Diggs: It is impossible for us to tell until we know what the government will do. But from what we know now, it ought not to take over three or four days at the outside; we don't think over two.

The Court: I think in this case the argument ought not to be limited on matters that call for explanation, but I am going to leave here next Saturday, and I won't be back for three or four days, and if you don't get through, I am going to hold this jury here and hold you all here. Now, I mean that. That is fixed.

Court will take a recess until two o'clock p. m., and the jury will go under the usual instructions until two o'clock.

(Whereupon Court took a recess until two o'clock p. m.)

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#### AFTERNOON SESSION, 2 P. M.

(Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the Jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

Whereupon OVERTON E. ABEL, was recalled for the Government for further direct examination.

*Further Direct Examination by Mr. Payne.*

Q. You are the same Mr. Abel that was previously on the stand in this case? A. Yes, sir.

By Mr. Payne: Mark that as Government's Exhibit 107 and this as Government's Exhibit 108.

By Mr. Swacker: I object to that as not being proper evidence.

By Mr. Payne: I have not offered it yet.

By Mr. Swacker: I thought you had.

By Mr. Payne: I am going to in a minute.

Q. I show you government's exhibit 107 and will ask you if that is a statement signed by you and if the statements contained therein are true?

By Mr. Swacker: I object, incompetent, irrelevant and immaterial, the statement he made to Mr. Stewart at the time he was there, that is what it is.

A. Yes, sir.

By the Court: Let me see that.

Q. What is your answer?

By the Court: No they are entitled to have their objection passed on, wait a minute.

By Mr. Swacker: I will not press the objection if the witness is allowed to tell just exactly what it is. I have no objection to that form of the statement.

By the Court: He will be permitted to explain it, the way to do is to ask him if this is not true if so and so is not true and if he says, but if there is any supplemental statement you would be entitled to make it, that of itself is not competent, but if they don't object except to the relevancy and the materiality I will permit it to go in and he can make explanation of the conditions under which he made the statement and he can supplement that and then it is for the jury to determine.

By Mr. Swacker: We will not object to it if the witness is permitted to go on and tell the surrounding circumstances.

By the Court: Yes, he will be.

A. Yes, sir, that is a statement made by Mr. Stewart, prepared in Port Arthur, May 2nd, 1919, and it was signed by me, of course *hurridly*, might be some point in there not just exactly the way it should be.

By Mr. Swacker: Look it over and see if there is

anything that requires further explanation and if you made any further explanation to Mr. Stewart.

Q. I also asked you if the statement made herein was true?

A. Well sometimes we have shipped a gravity slightly higher than 52 and that statement says 51 and 52.

By Mr. Payne: I offer this in evidence.

By the Court: They agree it may be offered in evidence subject to the question of relevancy and materiality. I will permit them to supplement the statement—that all that you want with this witness?

By Mr. Payne: I have another one like it, I will offer it also.

By Mr. Swacker: Is this all of them? There is no question but what we are entitled to have the witness to explain?

By the Court: Sure and I will permit you to have it.

By Mr. Swacker: I don't know, I am willing to let this statement be taken as true and everything stated in it; it relates to shipments, etc. So far as the statement attempts to state the general process I have no objection to it at all except we have a right to have it fully explained.

By the Court: Very well, proceed, offer it and I will pass on it.

Q. I show you Government's Exhibit 108 for identification and will ask if you made that statement and signed it?

By the Court: The question is whether you made that statement?

A. Yes, sir, I signed the statement.

By Mr. Payne: I offer that in evidence.

By Mr. Swacker: The only objection is as to its relevancy and materiality and our having the right to explain it.

By the Court: If you object to it I will exclude that.

By Mr. Swacker: No but I want to cross examine on it.

By the Court: Very well I will permit you to cross examine.

Q. Mr. Abel were you instructed by Mr. Looney the General Superintendent of the Gulf Refining Company to prepare a statement for the Special Agent of the Interstate Commerce Commission?

A. No, sir.

Q. Showing your general processes in the plant?

A. No, sir, I was not instructed by him.

By the Court: Were you instructed by anybody?

A. No, sir.

By Mr. Payne: Is it not a fact that at first you refused to give Mr. Stewart the information without the authorization of Mr. Looney and isn't it a fact that Mr. Looney happened to be in Port Arthur on the particular day that Stewart was there and authorized or directed that statement be given of the process in the refinery.

By the Court: They have agreed that it might be in evidence. They admitted that to go in there subject to the rights of cross examination as to the statements. If it was admissible they would have that right so I will let that go in the record under those conditions.

By the Court: Anything further?

By Mr. Payne: Yes, one or two additional questions.

A. I might make an explanation.

By the Court: Just wait the counsel for the defendant will cross examine you, get it in an orderly way.

Q. Does the Gulf Refining Company market any considerable amount of gasoline in Oklahoma?

A. I am not positive on that point, I think not.

By Mr. Swacker: This witness has not a thing in the world to do with the marketing of the product. He don't know a thing in the world about it. My understanding is that they do not do business in the state of Oklahoma.

A. That is handled by the sales division, the refinery department does not handle the sales business.

By Mr. Payne: May it please the court in view of the doubt as to the competency of this evidence I ask leave to withdraw Government's Exhibit 107 and 108.

By Mr. Swacker: I don't think that is proper at all, they have been admitted in evidence and they are in evidence in the case. And the only objection that could be made to them is by the defendant in the case and certainly the evidence cannot be withdrawn because the government might conclude it was not to their advantage.

By Mr. Payne: I object to that that it is not to our advantage.

By the Court: I will permit you to withdraw it.

By Mr. Payne: Just the manner in putting it in, I

have no objection whatever to all that being shown as we have endeavored to sustain the correctness of the same.

The Court: To my mind, a statement signed by the Assistant Superintendent is not competent.

Mr. Payne: I doubt it.

The Court: You could use it as a basis for asking him about certain facts, but that was not done in the due course of business, a statement made afterwards, and I would have stricken it out on objection.

Mr. Swacker: We don't say this statement is not correct and true, but it is not a full statement of what was given to Mr. Stewart.

The Court: You can ask to supplement it, and I permit it.

*By Mr. Swacker.*

Q. Mr. Abel: When you were down at the plant, when Mr. Stewart visited it, did you give him all the information he asked and source of information with reference to how your business was handled. A. Yes, sir.

Mr. Payne: I was not through with the witness.

Mr. Swacker: I beg your pardon.

*By Mr. Payne.*

Q. Mr. Abel can you state roughly the number of ears of what was billed as unrefined naphtha from Kiefer, Jenks and Drumright to Port Arthur during the period from January 1st, 1917, to April 30, 1919, were?

A. Well, we receive about two hundred ears per month from all stations, just the percentage from those stations I could not say, but I did not keep the record on it.

The Court: Did you examine the books to see?

A. No, sir.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Abel, what percentage of this unrefined naphtha is blended with what percentage of the refinery gasoline, state the maximum and the minimum percentage.

A. It would range from, as low as five per cent to as high as twenty per cent.

Q. Of unrefined naphtha to 80 to 95 refinery gasoline?

A. Yes, sir.

Q. That is, you could only blend off five to twenty per cent. in a blend of this material? A. Yes, sir.

Q. Now, when Mr. Stewart was there making this investigation you did give him a signed statement of certain facts in relation to it, did you. A. Yes, sir.

Q. Who prepared the statement?

A. Mr. Stewart prepared the statement.

Q. Did the statement contain all of the facts that you gave him, or just such as he desired?

The Court: That is withdrawn.

Mr. Swacker: Very well. That is all.

*Redirect Examination by Mr. Payne.*

Q. The Kiefer cars were not always blended with refinery gasoline, were they?

A. Well, we pumped them into the storage tank and they would be blended with the painter's naphtha and gasoline.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness dismissed.)

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And thereupon S. H. OTEY, having been previously sworn was recalled for further examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Are you the same Mr. Otey that was previously on the stand? A. Yes, sir.

Q. In your testimony before, you said something about the sulphur determination test; how often was that test made, and under what circumstances?

A. I don't know under what circumstances, because it was made upstairs by the chemist.

Q. How often was it made?

A. Why it was made every week.

Q. Made once a week?

A. And lots of times they took it during the week, as far as I know.

Q. Now, with reference to the doctor test, how often was that test taken? [A.] Oh, goodness sake!

Q. Is it a fact that the Gulf Refining Company has discontinued the doctor test? A. No, not altogether.

Q. Well, what do you mean, not altogether?

A. Why, in some instances they take doctor tests; they did when I was there. I have not been in there now for pretty near two years; I don't know what is going on in that place in this last two years.

Mr. Swacker: I object to this witness attempting to testify about the whole business of the concern. He has stated his business to be one of eight or nine testers.

The Court: I will permit him to testify what he knows of his own knowledge.

Mr. Payne: That is all. I think the witness has stated everything.

*Cross Examination by Mr. Swacker.*

Q. Mr. Otey, you were one of eight or nine testers?  
A. I am.

The Court: How many other testers did you have at that time when you were there?

A. There were three in the light oil department.

The Court: Were you in the light oil department?

A. I was.

Q. And did you handle all of it, or was it handled among you all?

A. No, it was handled among all three of us.

Q. You don't pretend to state what was handled by all of you, but what you did yourself?

A. Only what I was doing.

Mr. Swacker: That is all.

*Further Direct by Mr. Payne.*

Q. Now, is it not a fact the Docter test was not given the gasoline except where it was specially called for, where the specifications called for it? A. I did not hear that.

Q. Is it not a fact that Docter test was given to gasoline only when the specifications of your customers call for gasoline that would pass the Docter test?

A. Why, well, when I was, we, when I was there we used to give the Docter test in a majority of the times.

Q. On what?

A. On gasoline and kerosene and everything.

Q. You made a statement yesterday you made a record on a sheet whenever you took it?

A. Not whenever I took it, sometimes I did and sometimes I did not.

Q. Why was that? A. Just a force of habit.

Q. Just according to the way you felt, was there any reason?

A. There was not any feeling, there was just the way if

we found the stuff was N. G. in the Docter test there was no use of us marking it down.

Q. If you knew it? A. If we absolutely knew it.

Q. What was the purpose for making up the sheet, was it not for the purpose of giving information? A. Certainly was.

Q. What you had in your mind would not convey information to them? A. Certainly.

Q. Mr. Odie, I show you Government's Exhibit- 110 to 117 inclusive and will ask you to state what they are?

A. Why they are records of our distillation tests.

By Mr. Payne: I offer those.

By Mr. Swacker: We object as incompetent, and immaterial; no question of competency in the sense of their being records of the company but we question of their competency in proving their contents.

By Mr. Payne: I forgot to state the period.

Q. State during what period these books cover?

A. I don't know I didn't look at the date. You mean each book separately?

Q. The oldest date and the latest?

A. They start with the 10th month, 14th day and 16th year.

Q. October 14th, 1916?

A. Yes, sir, and run to January 10th, 1917.

By Mr. Payne: I think perhaps they will speak for themselves, the dates are in there.

By the Court: Unless they cover the period you are covering, the period of this indictment.

By Mr. Payne: Yes, sir, just during the period covered by the indictment.

By the Court: That is the only period I will admit them for.

By Mr. Payne: They are offered.

By Mr. Swacker: We object on the grounds of irrelevancy and immateriality and also incompetent as far as proving contents of themselves. We do not dispute they are not competent because they are books of the Gulf Refining Company.

By the Court: I will admit them for whatever they are *worth* so far as they obtain to the issues and where they are within the *period* covered by the indictment.

By Mr. Payne: I might suggest they are the best evidence obtainable.

By Mr. Swacker: May we have an exception?

By the Court: If they cover any other period not within the indictment, they are not admitted.

By Mr. Payne: I only offer them for the period covered by the indictment.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Otey, did you frequently make tests of various kinds and when it was obvious to whoever desired the test that the material was not in proper shape that it became necessary to record these tests? A. Yes, sir.

Q. For example when they made blendings they might make two or three different tries at blending? A. Yes, sir.

Q. And then test this blend then and find out how well they are done? A. Yes, sir.

Q. And if they apparently had not reached specifications there was no need for recording the test?

A. No, sir, there was not.

By Mr. Swacker: That is all.

By the Court: Proceed.

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And thereupon, A. A. TOPPING was recalled as a witness on behalf of the Government for further examination and testified as follows:

*Direct Examination by Mr. Payne.*

Q. You are Mr. A. A. Topping who was previously on the stand? A. I am.

Mr. Payne: Mark this Government's Exhibit 120.

The Court: What is that?

Mr. Payne: This is a statement of the shell capacity of the tank cars in which the cars named in the indictment were transported.

Mr. Swacker: We don't regard that as any evidence at all. We understand that the tariff from which this was taken is in evidence.

Mr. Payne: Yes, sir.

Mr. Swacker: We don't regard this as evidence; have no objection to the witness using it as a memoranda for the benefit of the court—

Mr. Payne: I offer it on the theory where there are a large number of records—

The Court: I will permit him to point out the items if that is in the record. That is taken from the tariffs?

Mr. Payne: Yes, sir.

The Court: That is already in evidence.

Mr. Swacker: That is why I am objecting to him testifying to this.

The Court: Wherever Exhibit 120 conflicts with the record, that falls down.

Mr. Swacker: Of course, we interpose an objection to it being received as evidence since we *the* question the legality of the tariff—

The Court: State whether or not you made an examination of the tariffs in evidence in this case, and tabulated the shell capacity of these tank cars, and whether or not this is a statement of the shell capacity, full shell capacity of the tank cars as shown in the tariff.

A. I did make such an examination, and that is a tabulation taken from the tank gauge book in evidence.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: May it please the court, here are two letters that were identified yesterday, Government's Exhibits 68 and 69, which I now offer in evidence.

Mr. Swacker: We object to both of those, as being irrelevant and immaterial.

The Court: Pass them up and I will look at them.

Mr. Swacker: They can't possibly prove anything more than we have admitted heretofore subject to the same objection.

The Court: Well, I will permit it.

Mr. Swacker: I think we should make our objection go to the competency as well; we admit its authenticity.

The Court: They offer that to show his relationship with the Gypsy Company, as to whether or not he was directing their—

Mr. Payne: Yes, sir, as specific instances of it.

Mr. Swacker: I don't concede that is a fact. I don't think the record establishes that.

The Court: I think it is competent certainly in view of the record.

Mr. Swacker: We have our exception.

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And thereupon, J. R. FREEMAN, produced and sworn as a witness on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Freeman, and your employment?

A. Joseph R. Freeman; employed by the Carter Oil Company.

Q. What is your position with the Carter Oil Company?

A. I am manager of the gasoline plant and refinery.

Q. Has the Carter Oil Company a plant at Carterco, Oklahoma? A. They have.

Q. Did that plant ship at one time a commodity described in the shipping order as crude, unfinished naphtha?

A. Yes, sir.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial.

The Court: On what theory do you claim this is competent?

Mr. Payne: Your honor suggested this morning that we could show that the other rates referred to in the letter of May 16, 1916, applied on a different commodity than the commodity that was shipped here.

The Court: From what point did they ship?

Mr. Payne: Carterco, Oklahoma, and Baton Rouge, Louisiana.

Mr. Diggs: I withdraw that part of the objection as to the competency. I object simply as being irrelevant, immaterial and hearsay.

Q. What kind of a plant—

The Court: If he knows of his own knowledge, I will permit him to testify, and that he shipped it between those two points under that rate.

Q. What kind of a plant has your company at Carterco, or rather what kind of a plant did you have in the year 1916, from May on?

Mr. Diggs: If the court please, can I make the same reservation I did before? I do not want to make objection each time. We don't object to these specifically, but want the right to move to strike hereafter.

The Court: All right.

Q. What kind of a plant did you have there in 1916, from May to December?

A. A skimming plant.

Q. Just what do you do in a skimming plant, very briefly?

A. Top crude oil, skim the top off of crude oil.

Q. And did you ship the top to Baton Rouge?

A. Yes, sir.

*By Mr. Payne.*

Q. Did you have any other machinery—strike that out—Were the tops that were shipped to Baton Rouge Refinery at Corico, did you have any steam stills at Coroco?

A. No, sir, did not.

By Mr. Swacker: I object to the form of the question, there are two or three questions asked together.

By the Court: Just ask him what it was he shipped. What he shipped under that rate between those points.

A. Crude unfinished naphtha.

By the Court: What did that consist of?

A. He stated it was the tops from the skimming plant, that is all.

*Cross Examination by Mr. Swacker.*

Q. —how far down did you top this material, this crude, did you top it down below kerosene, or to kerosene or where?

A. Minimum 3 per cent and a maximum of 22 per cent.

Q. And then only topped the naphtha fractions?

A. Fractions of all products with the exception of kerosene.

Q. Just topped the naphtha fractions down to kerosene?

A. Yes, sir.

By Mr. Swacker: That is all.

By Mr. Payne: Just one further question.

By the Court: Between those points what did you call that town?

By Mr. Payne: Cartereo.

By the Court: Where is it?

A. Two and a half miles out of Yale, Oklahoma, between Yale, Oklahoma, and Cushing, Oklahoma.

By the Court: How many refineries there?

A. At that point one but at Yale there are five or six other refineries, similar.

*Further Examination by Mr. Payne.*

Q. Mr. Freeman, did you ship it under the crude unfinished naphtha rate?

By the Court: Was it unfinished or unrefined?

By Mr. Payne: He stated unfinished.

*By Mr. Payne.*

Q. Did you ship it under that rate, any commodity other than the one you describe? A. No, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

By Mr. Payne: This goes to the intent, I believe motive and intent.

By Mr. Diggs: He is not charged with any motive or intent.

By the Court: I don't understand.

By Mr. Diggs: He says he is offering this on the question of motive and intent; there isn't any question of motive or intent of the Carter Oil Company.

By the Court: No, this is on the question of interpreting the letter, from Mr. Ellis where he refers to the same kind of commodity shipped from those points under that rate.

By Mr. Payne: Yes.

By the Court: And I admit it solely to throw light on what that meant.

By Mr. Diggs: He offers it for the purpose of showing motive and intent.

By the Court: I am admitting it on that ground, solely, wouldn't permit it on anything else, except that is in that letter and he refers to it so as to show what is meant by that.

By Mr. Diggs: I have no objection to it on that line.

By the Court: That is the only purpose it is admitted for.

Q. Was there any casinghead gasoline in the product that you shipped?

By the Court: And I will instruct the jury that this is not for them to determine by comparison but just offered to show the commodity that was shipped. If the other side can go and show another commodity was shipped between those points I will permit them to do that to throw light on what that meant.

Q. What was your answer to the last question as to whether it had any casinghead gasoline it is? A. No, sir.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Freeman, yours is the only thing that would be unrefined or unfinished naphtha the product of a topping plant?

By Mr. Payne: I object as calling for an opinion and improper cross examination.

By the Court: If he is qualified to answer the question I will permit him to do that, even though you make him your witness to do it. I will permit you to answer the question.

Q. Will you answer the question? A. Please read it.

By the Court: Do you concede he is qualified as an expert to answer it?

By Mr. Swacker: No, I do not concede it.

By the Court: If you are going to make him an expert as to his knowledge about the character of a commodity that would go by that name—that—

Q. I will put it another way. Have you known the name, crude unfinished naphtha to be applied to naphtha fractions other than those that may be a product of a topping plant.

By the Court: You may answer that if you know.

A. The question is misleading. I do not understand.

Q. I say have you known the term crude, unfinished naphtha to be applied to any naphtha fractions which may be the result of production in some other fashion other than by a topping plant? A. Yes, sir.

By Mr. Swacker: That is all.

(Witness excused)

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The Court: Call the next witness.

Mr. Payne: May it please the court, we have no further witnesses ready—we do not feel safe in resting the case, as we have had no opportunity to check up, we have been under such a forced drive all week, and I ask leave of the court to rest the case conditionally, tentatively—

The Court: You have already in the record the permission to introduce evidence as to the Director General, as to those rates.

Mr. Payne: Yes, sir, I have some telegrams from Washington which informed me there was such an order made, it was on December 26th before the railroads were taken over.

The Court: I will permit you to introduce the proper evidence as to those matters at any time during the trial, and I will permit you, after you have checked up, if there is any matter, it will be within the discretion of the court. You rest now, and the court will give you permission to introduce other evidence within his discretion. When you rest, I am not going to let you come in and say—come in Monday morning—you will have to show me about it.

Mr. Payne: Really, we have had no time to go over the record.

The Court: I will exercise the matter of discretion, if there are any material matters overlooked, if you had rested without making that reservation, I would exercise discretion and permit that, to meet the ends of justice.

Mr. Payne: Perhaps it would be better for the government to move a continuance until Monday morning.

The Court: On the statement that all the evidence is not ready, the court will take a recess until Monday morning at 9:30, and I will say that I expect the government not to take up much time on Monday with this case. The jury will now be permitted to go until 9:30 Monday morning, with the usual caution to be careful. Here is a long case, and the indiscreet conduct of one juror might require this case to be tried over. I give you that caution as to how important it is to be careful, and not permit anybody to talk to you about this case in your presence, don't let them talk to you about it. If anybody starts to talk to you about the case, in your presence, get away from them, or make them stop.

Now, the jury will be permitted to go under these instructions, together with all the other precautionary instructions I have given you since you have been empaneled.

The court will now take a recess until 9:30 Monday morning.

Whereupon, court took an adjournment until 9:30 o'clock a. m., Monday, April 19, A. D. 1920.

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MONDAY MORNING, APRIL 19TH, 1920.

Nine-thirty, a. m.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be

present, and counsel for the plaintiff and counsel for the defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

By the Court: Now, are you ready to take up this case?

By Mr. Payne: Yes, your honor.

By the Court: Now, there is one thing that I remember. One of the witnesses, I believe Mr. Otie, that he was given a record to see whether or not that Kiefer shipment was entered by any other name. He was never put back on the witness stand to tell what his investigation was. See whether the shipment was entered Kiefer Gasoline or just Kiefer and whether or not it was entered by any other name on that book.

By Mr. Payne: My recollection is that was gone into on cross examination.

By the Court: He was never put back.

By Mr. Payne: Two or three instances were shown where he made entries of just Kiefer.

By the Court: Sure, but there was one place where it was referred to another to as Kiefer and then I asked the question whether it was ever referred to as Kiefer gas and he said he did not know and he was instructed to take the record and was to be called back. He was never put back on the witness stand. I know, I can remember, I know he was.

By Mr. Chambers: The first witness we want to introduce is Mr. Sanderson to identify some correspondence.

By Mr. Diggs: We will admit this is correspondence.

By Mr. Chambers: Taken out of the files.

By Mr. Diggs: Yes.

By the Court: It is admitted that these are records taken out of the files of the defendant company. Do they show the date.

By Mr. Chambers: All but that one.

By Mr. Payne: Not the defendant company, the Gypsy Company.

By the Court: Well, the Gypsy Company, letters from Mr. Ellis to Mr. Donovan. And they admit they are the letters written and signed by C. B. Ellis.

By Mr. Chambers: These are copies if the court please.

By the Court: No point made on copies.

By Mr. Chambers: No.

By Mr. Swacker: That has no date on it and by its subject-matter it is obviously before the times related in the indictment.

By the Court: I will permit this—

By Mr. Chambers: Now, we offer Government's Exhibits 135, 136, 137 and 138 in evidence.

By Mr. Diggs: The defendant objects to each of these exhibits on the ground of relevancy and materiality. We don't object on the ground they are not proven to be our papers.

By the Court: Very well, you have your exception on the ground of irrelevancy and immateriality.

By Mr. Payne: May it please the court to make the record complete we wish to offer in evidence the pumping record of the Gulf Refining Company. I understand Judge Diggs will not raise any objection.

By Mr. Diggs: The understanding is I don't require you to prove these are our records.

By the Court: They admit they are records of the Gulf Refining Company. Do they show the period that cover—

By Mr. Payne: Yes, sir, the period covered by the indictment.

By the Court: They are admitted where they are within the period covered by the indictment and not when they are without that period. The records could be diminished if it became essential later.

By Mr. Payne: These are Government's Exhibits from 120 to 134, both inclusive. That is they are the pump records of the Gulf Refining Company at the Port Arthur plant.

By Mr. Diggs: The defendant admits Government's Exhibits from 120 to 134 are the records of the Company but object to the evidence on the grounds they are irrelevant and immaterial.

By the Court: I will permit them, where they are within the period covered by the indictment.

By Mr. Diggs: We object on the same ground.

By the Court: Overruled.

By Mr. Diggs: Give us an exception.

By the Court: It will be sustained wherever they are without the period covered by the indictment, but where they are within the period covered by the indictment the objection is overruled as to being irrelevant and immaterial.

By Mr. Payne: May it please the court, Exhibit 10, 11, 12, 13 and 14 being the unloading records of the Gulf Refining Company at Port Arthur plant showing the numbers of the tanks into which the cars in the indictment were pumped during the period from September 12th, 1916, to June 25th, 1919, were not put in evidence and to make the record complete we offer these.

By the Court: You agree those are records of the defendant?

By Mr. Diggs: Yes, sir.

The Court: Any objection?

Mr. Diggs: Object as being incompetent and irrelevant.

The Court: Such facts of the record will be considered as it pertains to the matters in this case. If it becomes necessary the other part of the record may be eliminated on motion, either now or after this case is tried.

By Mr. Payne: I might explain the first book starts a little prior to the period in the indictment.

By the Court: Only such part of these records will be considered in evidence as are within the period and dates covered by the indictment.

Mr. Payne: May it please the court, on page 706 of the record, being the record for Friday afternoon, if I remember correctly, the afternoon the Railroad Traffic officials were on the stand, their letters were offered at that time, but were not admitted in evidence until later, and on page 706 it was stated just before we adjourned: "I move the court the exhibits referred to a few minutes ago be admitted in evidence." For the benefit of the record, may I state that the exhibits there referred to are exhibit numbers 85, 92, 88, 89, 91, 90, 86, 87, 98 and 93.

May it please the court, in reference to the tariff situation, just after the beginning of government control, I offer a certified copy by the Interstate Commerce Commission, of Order No. 1 of the Director General of Railroads, and in connection with that would call the court's attention to the President's proclamation of December 26, 1917, of which I take it the court will take judicial notice, which states:

"That the usual and ordinary course of business of carriers be continued in the names of the railroad companies until the Director General changes them by general or special orders."

So that—

Mr. Swacker: We maintain that that is not an adoption of the tariffs in the manner and form provided by law. The President's proclamation provides that the manner and form theretofore established shall continue.

The Court: Let me see the proclamation.

Mr. Payne: Your honor, I was told by telegram that it was being sent, but it has not yet been received.

The Court: The proclamation is printed in the statutes at large, and you ought to be able to find them here.

Mr. Payne: We have tried to locate one, but we have been unsuccessful.

The Court: Now, for the present, I will overrule the objection and give you an exception, but I will examine further into this if you will let me have this at noon.

Mr. Swacker: I might state what the manner and form is.

The Court: Yes.

Mr. Swacker: Section 6 of the Interstate Commerce Commission Act provides that the Commission shall establish rules and regulations governing the construction and filing of tariffs. I put in evidence the Commission's rules and regulations the other day. They are in 18-A and supplement 3 thereof. I called attention to 9-J, which provides rules and forms of adoption of tariffs. The proclamation of the President provides that the Interstate Commerce Act and all orders of the Interstate Commerce Commission theretofore made not in conflict with the proclamation would remain in force and effect. Now, if this order of the Director General is an effort at adoption, it would not conform to the President's proclamation.

By the Court: Very well.

By Mr. Payne: Right in that connection I call attention to paragraph 7, of order number 1, which states "Existing schedules of rates are to be observed."

By Mr. Swacker: That is what I have reference to.

By Mr. Payne: Now in that connection I wish to refer the court to the Berwin White case, 235 U. S. 371, in which a letter was filed with the Commission stating

what a demurrage charge would be. Now the bill of certification of the Interstate Commerce Commission says that this order was kept in the files of the Commission. Now the analogy is quite close, if a letter filed with the Commission by the Railroad Company.

The Court: They say that although that was filed it was not filed in accordance with the rules promulgated.

By Mr. Swacker: Was not posted and filed regularly in accordance with the rule.

By Mr. Payne: The Berwin White case relates to that.

By the Court: They don't make the point the letter was not file- but they say that although it may have been filed it doesn't comply with the pre-war rules which the President did not abrogate in his proclamation.

By Mr. Swacker: Yes, sir, and I say the Berwin White case does not control because there is a substantial difference.

By the Court: I want to examine the case and then I will give you my views on it and then you point out where they may not comprehend all the facts in the case.

By the Court: Always go on the theory whenever I practiced law I would much prefer to know what the judge thought about it in advance to making my argument then I would know what to direct my attention to, otherwise you are just beating the air. It is to be assumed that because a judge may have a *prima facie* opinion that it is not a fixed opinion. Proceed.

By Mr. Payne: May it please the court, I just want to call the attention of the court to the fact that there has been no expert testimony with reference to the rate and I would like to ask whether the court wishes that taken up now or would he prefer—

By the Court: I want you to keep Mr. Topping here so when the case is closed and matter I don't understand about the rate he will be here available for the benefit of the court. The way I understand it there is no conflict what the rate is and that is just like a written contract and that is to be construed by the court as a matter of law.

By Mr. Payne: Yes, the authorities clearly hold that.

By the Court: Now is not the time to show that then.

By Mr. Payne: Alright I just wanted to find out the wishes of the court. The government rests.

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By Mr. Diggs: The defendant moves to strike from the record the admissions heretofore made by the defendant as to the Gulf Oil Corporation owning the stock of the Gulf Refining Company and the Gypsy Oil Company and the Gulf Pipe Line Company of Oklahoma on the ground and for the reason the government has not made such admissions relevant and materially introducing evidence showing, or tending to show, the dominance and control of the Gulf Refining Company, the Gypsy Oil Company and the Gulf Pipe Line Company by the Gulf Oil Corporation, or that said companies are run and controlled by the same officers, or that a separate corporate existence and independence of each of said corporations is not maintained.

The defendant further moves the court to strike from the record and from the consideration of the jury the evidence introduced by the government, over the objections of the defendant, showing, or tending to show, the method of doing business by the Gypsy Oil Company at its casing-head gasoline plant and the statement of the employees of the Gypsy Oil Company as to the nature and *quilty* of the articles produced, and the evidence showing, or tending to show, that the articles produced were, at the time referred to, as gasoline, on the ground that the same is irrelevant and immaterial in that they are shown to be the acts and declarations performed and made by third person not under the guidance or control of this defendant; and that no such dominance or control of the Gypsy Oil Company and its employees, by this defendant, has been shown to make the acts and declarations competent evidence as admissions against this defendant; nor has it been shown said acts were performed and statements made in the presence or hearing of this defendant or any officer or agent of this defendant; or that same were ever made to the knowledge of this defendant under such circumstances and conditions which would make such acts and statements in the presence or hearing of the agents of this company, of this defendant evidence against it, and referring particularly to such statements and declarations shown in the evidence by J. H. Reidman, Walter Millard, C. E. Sweet, Frank Ralph, H. W. Morris, Joseph Manson.

The defendant also moves to strike from the record all evidence that the Gypsy Oil Company shipped this product, known as casinghead gasoline, south or north before the second day of December, 1916, and shipped same under the name of gasoline, on the ground that said evidence is irrelevant and immaterial as to the guilt of this defendant; and on the further grounds that it does not appear from the evidence of the government that the product shipped prior to December 2, 1916, was not lawfully shipped and described as provided by the tariff rules and regulations; and on the further ground that said evidence as to this defendant is hearsay; and on the further ground that said evidence cannot be competent and material against this defendant on the ground and for the reason that the government has not shown that said shipments were made under like conditions and circumstances and subject to the same regulations and laws as to the shipments made after December 2, 1916, and for the same reason and on the same grounds moves to exclude all evidence of shipments north after December 2, 1916; and all admissions of the defendant that the Gypsy Oil Company shipped such product north and south prior to December 2, 1916, and described same as gasoline as being irrelevant and immaterial on the ground above stated, and no evidence has been introduced by the government that would tend to make such admissions relevant and material against the defendant; and on the further ground that such evidence and said admissions do not prove, or tend to prove, against this defendant the nature and quality of the articles shipped and could only become competent, material and relevant if the government had proved the substance shipped to be gasoline.

The defendant moves to strike from the record all evidences relating to the Tribes Gasoline Company, and Ajax Gasoline Company, the Akin Gasoline Company, the Monarch Gasoline Company, the Eagle Gasoline Company, the Motor Fuel Company, Chestnutt and Smith Gasoline Company, Oil States Gasoline Company, I don't know whether the name should be Oil States or All States the Totem Gasoline Company, Crosby and Gillespie Gasoline Company as to how their plants are operated, the nature of the product produced, how such product was billed and sold, the name under which it was produced and sold, the name by which it was generally called and known among the other employees of said companies at the plants producing the same for the reasons and on the grounds that same is irrelevant and immaterial against this de-

fendant and is hearsay, and is "res inter alios acta"; and on the further ground that it does not prove such usage as would be binding upon this defendant, it not being shown that such facts came to the knowledge of the defendant or even to the knowledge of the Gypsy Oil Company, the defendant being a Texas Corporation and it not being shown that it had any business dealings or connection with any of the companies or persons named; and on the further ground that such evidence does not prove and cannot prove or establish a custom in this, that it is not shown to be general and cover all persons dealing in the article or to include sellers or buyers as well as the employees in the plants, and in this connection particularly moves to strike the evidence of C. C. Waddell, George Anderson, Charles McCarroll, W. K. Holmes, James Baxtus Saint in such regard.

The defendant moves to strike the admission made by it as to the fact of shipments to the Texas Company set out in counts 36 and 81 of the indictment on the ground that same is irrelevant and immaterial and the government has introduced no evidence making, or tending to make, the facts admitted in such admission relevant and material evidence against this defendant. The defendant moves to strike the evidence of John R. Haich as to the gasoline plants of the Ajax Gasoline Company, Totem Gasoline Company, Jontil Gasoline Company, Kelly Gasoline Company, Swanson and Black Gasoline Company, Texas Company, Oklahoma Petroleum and Gas Company, All States Gasoline Company and Gypsy Oil Company as evidence in regard to the method of the operation of said plants, the nature of the commodity produced by said plants, names by which it was billed and shipped from said plants and what such commodity was generally called by the employees of said plants on the ground and for the reason that same is irrelevant and immaterial to any fact at issue in this cause, is hearsay as to this defendant, and being transactions, conversations and declarations by parties not connected with the defendant, and not made in the presence of any of its agents or employees and is not evidence proving or tending to prove, that the nature of the commodity shipped to and received by the Gulf Refining Company, set out in the indictment was gasoline, and on the further grounds that it appears the practice of said plants that the bills describing and the articles shipped as gasoline was done under the direction of the superior officers of the witness testifying in accordance with the customs of other persons not shown.

The defendant moves to strike the evidence of E. J. League as to the nature of the product inspected by him as evidence as to what the product produced by casing-head gasoline plants in the Oklahoma district is called, and the conversation with Mr. Donovan and Mr. Millard as to the nature of the product produced by the Gypsy Oil Company and what they called the product and also moves to strike Government Exhibits Number 58 and 59, being a report of such witness as to the Gypsy Oil Company product; and also moves to strike that portion of the evidence of said witness relating to the product of the Franchot plant and how such product was commonly known by the employees in the plant on the ground that same is hearsay, irrelevant and immaterial to any issue in this cause being as to this defendant hearsay and transactions between third parties with whom it is not shown this defendant is in any way connected.

The defendant moves to strike the evidence of J. S. Scott as to what the employees at the casinghead gasoline plants in Oklahoma called the products produced by them and how such plants billed and described such products and as to the custom of the employees of such plants calling such products gasoline, on the ground that the same is irrelevant and immaterial "res inter alios" as to this defendant and not being shown to have come to the knowledge of this defendant and on the ground that such evidence is incompetent to prove the nature of the product shipped to and received by this defendant as set out in the indictment; and on the further ground that the alleged custom or usage attempted to be set forth is not shown to be known to this defendant; and on the further ground that custom and usage is not competent evidence to prove the nature of the product described in the indictment as being shipped to and received by the defendant on the further grounds that the alleged custom is not shown to be general, to the buyer and the shipping public but is confined to certain localities.

The defendant moves to strike the evidence of A. W. Barnhart as to the processes of the Franchot plant on the ground that same is irrelevant and immaterial to prove the nature of the commodity which the indictment charges was shipped to and received by the Gulf Refining Company and the nature of such product cannot be proved or established by the practices, customs, usages, acts or declarations of third persons, and with whom this defendant is in no wise connected.

The defendant moves to strike Government Exhibits Nos. 66, 68, 69, 86, 87, 88, 95, 97, 98, 100 to 106 inclusive, and also Government Exhibits Nos. 110 to 117 inclusive, and also Government Exhibits 135, 136, 138, 120 to 134 inclusive, 10, 11, 12, 13 and 14 in the tabulated statement checked by Witness Otie No. . . . on the ground that said exhibits are irrelevant and immaterial to any issues in this cause and do not prove or tend to prove that the commodity charged in the indictment to have been shipped to and received by the defendant was gasoline and does not tend to prove or disprove that the commodity described in said indictment was not unrefined naphtha, and on the further grounds it is incompetent to prove the nature of the commodity shipped by declarations or practices of third persons.

The defendant moves to strike the evidence of J. W. Freeman as to the nature of the product of the Carter Oil Company, its plant at Carterco and by what terms it was described and spoken of, and billed and shipped as being irrelevant and immaterial as to any issues in this cause and not proving or tending to prove the nature of the commodity charged in the indictment to have been shipped to and received by this defendant, and on the further ground that the nature of such commodity cannot be proved or established by acts or declarations of third parties with whom this defendant is not connected.

The defendant moves to strike from the record all evidence as to the operation of casinghead gasoline companies in the manufacturing and shipment of the commodities produced by them; and as to all statements of the employees of said companies; as to the nature, quality and physical characteristics of said commodity produced by them and how said product was called and described by the employees of said companies, or by others in the neighborhood of said companies on the grounds that same are irrelevant and immaterial to any issue in this cause, and on the further grounds that same constitutes transactions between third parties and are hearsay as to this defendant, and on the further ground that same is intended to prove the commission of a crime by the defendants by the declarations of third parties without the knowledge of the defendants by showing such third parties called a certain product by a name designated by them without evidence that the product designated by them was identical in its properties, physical and chemical constituents and attributes to the commodity which the indictment charges was shipped to and received by

the defendant; and on the further grounds that such evidence cannot prove the defendant guilty of the crime charged, being the acts, established usages, customs and practices indulged in by third parties.

Mr. Diggs: As far as the defendant is concerned, if the court please, we are willing that the court reserve its ruling on this until the close of our case. As the court has intimated he would like to hear argument and the whole matter can be presented more consistently, we believe in one argument.

The Court: Very well.

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WILLIAM A. SLATER, called as a witness on behalf of the defendant, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Green.*

Q. Your name is William A. Slater? A. Yes, sir.

Q. Where do you live? A. Port Arthur, Texas.

Q. What is your business?

A. Assistant superintendent, Gulf Refining Company.

Q. At Port Arthur, your home? A. Yes, sir.

Q. Will you state briefly, for the benefit of the court and the jury, what training and experience you have had to fit you for and as an oil refiner?

A. I have a Bachelor of Science degree in industrial chemistry. I have been with the Gulf Refining Company since October, 1907, and have worked in the laboratory and as an engineer. I constructed and operated the Fort Worth Refinery and have since been moved to Port Arthur as assistant superintendent.

Q. You say you received your degree in 1907? A. Yes.

Q. Since that time, you have been continuously in various phases of the oil business? A. I have.

Q. Were you or not, ever in charge of the casinghead gasoline plant of the Gypsy Oil Company in Oklahoma?

A. Mr. Donovan—

Q. Answer yes or no. A. Yes, I was.

Q. Now when? A. From April until August, 1919.

Q. You mentioned Mr. Donovan.

A. I relieved him when he was ill.

Q. And did you or not remain there after his death?

A. I did.

Q. Until a successor for him was appointed? A. Yes.

Q. In that capacity, in a general way, what were your general duties there with reference to this product which we term unrefined naphtha?

A. I was responsible for the manufacture of the product from the gas delivered to the casinghead plant.

Q. Anything further?

A. For the repair and upkeep, responsible for the shipment, responsible for any expansion of the business.

Q. From your observation and experience at that plant, are you able to state to the court and jury what was the Baume' gravity of that product and the vapor tension as shipped, giving maximum and minimum? Answer that yes or no? A. Yes.

Q. Will you please state now the Baume' gravity and the vapor tension of the weathered unrefined naphtha as shipped from Jenks?

Mr. Chambers: If the court please, wouldn't the record be the best evidence of that?

Mr. Green: I am asking of his own knowledge.

The Court: I will let you see if he is qualified; if you want to test him. If he has an independent knowledge, outside of the record, he may testify to that.

Mr. Chambers: What records are you talking about, or these commodities at what point?

A. He was asking me from Jenks to Port Arthur on unrefined naphtha.

Mr. Chambers: Is that the commodity shipped from Jenks to Port Arthur?

A. Yes.

Mr. Chambers. During what time?

A. During the time that I was in charge of the plant.

The Court. Now, what year were you there?

A. From April until August.

The Court: What year?

A. 1919.

The Court: Now, where do you get your knowledge; you say you have the knowledge; where do you get it?

A. From records and information given me by the employees.

A. At the time you were there?

The Court: When did you get this information?

A. During the time I was there.

The Court: I will permit you to put the record in evidence, and then when you put the records in evidence, I will permit him to state that he is familiar with these records and have been over them and what they are, for the benefit of the jury.

Mr. Green: Just to make the matter clear, this is the man who was there in charge of that plant, and operated it; but to get the matter in concrete form and before the jury, I am asking him to testify not to records but from his knowledge gained there at the plant.

The Court: No. Now, if those records were destroyed and the best evidence was not obtainable, he could do this; but as long as those records exist, they must be put in evidence, so they can be searched. If they are voluminous records, I will permit him to testify as to what those records show, for the benefit of the jury.

Mr. Green: I think most of the material records are in evidence, but I want him to give the maximum and the minimum. My main purpose is to get this in such shape that we can put hypothetical questions.

The Court: No, but you will have to get the records in evidence; then I will permit him to state. If he made the experiment and made the entries, although they are matters of record, I will permit him to state on his own recollection he remembered what the maximum and the minimum was.

Mr. Green: That is exactly what I had in mind.

The Court: Have you a recollection—do you know, independent of what the records show?

A. I do.

The Court: Well, if he knows independent of what the records show, of his own knowledge, I will permit him to testify.

Mr. Chambers: May I ask a question?

The Court: Very well.

Mr. Chambers: Were you in Jenks during that time?

A. I was.

Q. Did you make the tests? A. I did not.

Q. Who made the tests?

A. The man in charge of the plant.

Q. Then your testimony would be what he reported to you? A. Yes, sir.

Mr. Green: We show the knowledge came to him as being in charge of the business.

The Court: If they made it under his supervision and made the report to him daily, I will permit him to testify.

Mr. Green: That is our position.

The Court: Well, if he is qualified to answer that, if he was there and they are working under him daily, and he knows that information came to him daily, that is, him doing it, when they are doing it under him.

Mr. Green: That is our position.

*Examination (Cont'd) by Mr. Green.*

Q. Now, when you were in charge of these plants in Oklahoma, state to the court just how these matters were handled, and how the information came to you in the course of the business?

A. Information came to me by reports and by telephone conversation and by personal visits to the plant.

Q. How often in the course of the business there?

A. I make practically a visit to the Jenks plant every week.

Q. Were these matters under your immediate direction?

A. They were.

Q. You were responsible for them? A. I was.

Q. And were they all done and carried out in accordance with orders from you? A. They were.

*Examination by Mr. Chambers.*

Q. Now, you were located at Tulsa all that time?

A. I was living in Tulsa at that time.

Q. You were not there and did not see the tests made and don't know the manner in which they were made, except as they stated them to you? The reports were made to you here in Tulsa? A. Some of them.

Q. Weren't all of the reports made to you here in Tulsa?

A. Some of the reports were made to me while I was in Jenks.

Q. Your office was here in Tulsa? A. Yes, sir.

Q. It was their custom to send the reports to Tulsa?

A. Yes, sir.

Q. You would visit the plant once a week for the purpose of looking over the whole institution? You would visit one plant one week and another plant another?

The Court: I expect you had better introduce the

records. After you introduce the records, I will let him testify.

Mr. Green: Your honor, I think this the proper way.

The Court: Well, now, I am not going to permit this evidence unless you show me some authority.

Q. You stated that you visited Jenks once a week at least?

The Court: No, he didn't say at least.

Q. Well, once a week—well, state to the court when you did. That is merely a predicate I am leading to.

A. I visited Jenks about once a week.

Q. Now, then, was that the only information you got from Jenks?

A. I had information over the telephone; I had information by records.

Q. Now, you say over the telephone; how often?

A. Perhaps daily.

Q. Was it or not as often as shipments were made?

A. I don't know that.

The Court: He would only get that by hearsay himself. Now, these tests, were records made of them in the plant?

A. Yes.

The Court: I think you ought to introduce these records, and after you introduce these records, I will permit him to state, after you have that predicate.

Mr. Green: I am not asking for the average from the records but his personal knowledge. I propose to show by him that he knows and that what he is testifying he knows.

The Court: No, but the record shows different, he doesn't know.

Mr. Green: We save our exception.

The Court: He has stated when the tests were made, he was at Tulsa; that he went down to Jenks about once a week, and that he got reports perhaps daily over the 'phone. Now, that is the extent of his knowledge.

Mr. Green: I don't want to be captious with the court about this. Of course, he couldn't have been at Jenks all the time because he had supervision of all of these plants.

The Court: I will permit you to do that, if you will introduce the record.

Mr. Green: Well, for the purpose of the record, we will just take our exception.

The Court: Very well. If you have any authorities on this evidence, I will hear you. The way I understand, you are required to produce the best evidence. I think that is the rule of law. I will hear you, Mr. Swacker.

Mr. Swacker: When a man is testifying to a matter of knowledge which is a matter he acquires in a course of long series of events, even though it is in a measure hearsay, it is receivable in evidence as knowledge.

The Court: (Reading from Wigmore on Evidence and Knowledge.) "Under the general principle of knowledge, testimony founded not on personal observation, but on the information of others, is inadmissible. But this cannot be enforced as a rule of unbending rigidity. There must be exceptions; the affairs of life often recognize a practical trustworthiness in beliefs not founded altogether on personal observation." That is the section you refer to?

Mr. Swacker: Yes, sir.

The Court: (Continuing reading) "The law of evidence must follow the facts of life as closely as is consistent with caution. In a number of instances, it has recognized exceptions to the rule. The records of a public office are not personally known by the official successors to be authentic. But their place of custody is of itself sufficient circumstantial evidence of genuineness; and for much the same reason, the belief of the succeeding incumbents is recognized as competent knowledge. In this and a few related ways, the testimony of a public officer, and even of private persons having to do with a mass of records, may be received. So, too, a public officer's certificate of entry of a transaction actually performed by his subordinate, not by himself, may be received. But this is not conceded for the account books of a private person. The use of scientific instruments, apparatus, and calculating tables, involves to some extent a dependence on the statement of others, even of anonymous observers. Yet, on the other hand, it is not feasible for the scientific man to test every instrument himself; while, on the other hands, he finds that practically the standard methods are sufficiently to be trusted. Thus the use of a vacuum-ray machine may give correct knowledge, though the user may neither have seen the object with his own eyes nor have made the calculations and adjustments on which the machine's trust-

worthiness depends. The adequacy of knowledge thus gained is recognized for a variety of standard instruments. In some instances, the calculating tables or statistical results are admitted directly, under an exception to the hearsay rule."

Well, now the test they made, they are by scientific men, they didn't doubt but what they were admissible. You can state that tests were made, but now the question here is, how do you find out the tests were made? I permitted them to prove these sample boys went down and got the samples, that is a practice. I don't believe he can testify to this, unless you introduce the records or show they are lost.

Mr. Green: Your honor, I may be wrong about it, but it is my firm conviction it is admissible evidence, and I simply want to take an exception.

The Court: I was trying to point out a way to get it before the jury. If you have the records in your possession, why, I won't require you to read every record to the jury. It says it must be introduced here. "Under the general principle of knowledge, testimony founded not on personal observation, but on the information of others, is inadmissible. But this cannot be enforced as a rule of unbending rigidity. There must be exceptions; for the affairs of life," etc.

But it says it must be done under the rules of caution.

Mr. Green: Now, if the court will just hear me a minute, I am so firmly convinced that that is not necessary that I doubt these records are here. I have no objection to them.

The Court: Well, they are down at Jenks.

Mr. Green: They may be necessary, and we may conclude, and may not conclude, to follow that course.

The Court: If you bring them up here, I will require that you let the government have an opportunity to examine them. I won't require you to encumber this record with them.

Mr. Swaecker: They are in the government's possession now.

Mr. Green: We are not trying to keep them out, but I am trying to keep this down in a concrete form. We are not trying to conceal a record, and if they can show—

The Court: So they can have an expert to run through them as an auditor and tabulate them.

Mr. Swacker: I mean to say they are in the hands of the clerk.

Mr. Chambers: As I understand the proposition, they are asking this man from his own knowledge, which he has shown is not his own knowledge.

The Court: I don't care a cent. I am going on with this trial now. I am not going to let them prove this knowledge when you have got a way.

Mr. Chambers: He don't know all of the record. The only way he could know that from the entire record.

The Court: You had just as well now start out to conform to my idea. I am not going to let him introduce in evidence, any evidence the government has not got a fair show to answer. If they show me you have got the records in your possession and have records on there and verify what I say, I will let him answer.

Mr. Chambers: I want to make another objection. That is, these records are not during the time covered by the indictment, but after August, 1919. The indictment is up to May. Now, these are from April to August.

The Court: Well, I will only permit him to answer from April to May.

Mr. Green: He was there shortly before. The reason I covered the whole matter was, as I recollect, the court may let certain matters in for the government. I am not disposed to insist on the time except within the indictment. I merely wanted to get this in form to get it before our experts.

Mr. Chambers: Does the court appreciate the fact they are asking for a minimum and maximum averages?

Mr. Green: Not averages.

Mr. Chambers: No, not averages. And this man's testimony does not go to the fact even that he heard all of these reports. Those reports are of an absolute record.

The Court: I don't believe I will let him answer.

Mr. Green: Just note our exception.

The Court: You can get the records and show them to him, and if they don't agree to that, I will let you put him back on the stand, and the government has got to come across to expedite this hearing. I am going to put the strong arm also on you fellows, like I did on the other side.

Mr. Chambers: All right.

The Court: It looks to me like this is a matter of compilation. Take the books, take an expert with you, and go out and figure it up.

Mr. Green: The only purpose I have is to get it before him so I can ask and follow it up with some other questions.

The Court: I see, you lay the predicate, for the experts, and that becomes important, to have that predicate absolutely accurate.

Mr. Green: Yes, sir, and if I did not believe this witness was going to tell the absolute truth,—

The Court: I will let that witness go out and take an expert and make these calculations and come back here and testify to it, and if the government wants to verify it, they can have an expert right along while they are figuring it.

Mr. Green: That is a very cumbersome method, if a man knows.

The Court: But I don't think his evidence is competent now, but I was going to let it in anyway, when I saw it was fair for the purpose of this trial.

Mr. Green: That is all we want.

The Court: I don't think it comes within the strict rule. But whenever I see and know a thing is fair,—

Mr. Green: We have not had, I understand, these records in our possession.

The Court: That is the reason, you can take this witness and one of your experts and they can have an expert go right along with him and figure this up, and I will let him come back and state what the maximum and minimum is.

Mr. Green: That will delay us. We were going to have this witness—ask this witness these questions and then put on our experts. We are right up to that point.

The Court: All right, I will let it go in subject to their objection, and unless you verify it, in this manner, I will strike it out, and so that will carry the expert evidence with it. I will do that so as to expedite the matter.

Mr. Green: I think that will expedite the matter.

The Court: Very well.

*By Mr. Green.*

Q. Now, Mr. Slater, I will cover the period of the indict-

ment,—what is the period of the indictment,—well, from April through May? A. Yes, sir.

Q. Now, covering the period, and from this information that came in the manner that you have detailed to the court and the jury, will you give, state to the court and jury what was the *Bohme* gravity on the unrefined, weathered unrefined naphtha shipped from Jenks to Port Arthur, giving the minimum and the maximum.

Mr. Chambers: We object, as being irrelevant, incompetent and immaterial; and for the further reason, the witness has not qualified himself to testify; and for the further reason, there is nothing under the evidence, shown by the evidence—for the further reason it is not the best evidence.

The Court: Now, with the understanding, for the purpose of expediting this hearing, that the defense will take this witness and an expert and take the books covering these periods and verify that from the records, I will permit him now to do this; but unless that is done, I will strike it out.

Mr. Green: That is satisfactory.

Q. Answer the question. A. From 75 to 85 *Bohme*.

Q. From 75 to 87 *Bohme*? A. Yes, sir.

Q. Will you state what was the vapor tension on this weathered, unrefined naphtha from Jenks to Port Arthur?

Mr. Chambers: I object, as being incompetent, irrelevant and immaterial, for the reason the witness is not qualified, and it is hearsay and not the best evidence.

The Court: I will admit it under the same understanding.

A. From nine to ten pounds.

Q. What is it? A. From nine to ten pounds.

Q. Now, will you state what was the *Bohme* gravity on the blended, unrefined naphtha shipped from Kiefer and Drumright during that same period?

Mr. Chambers: We object, as being irrelevant, immaterial and incompetent, and not the best evidence, and hearsay, and the witness is not qualified to answer the question.

Mr. Green: I was not conducting that examination, and a good deal, possibly of it is, I don't know whether it is higher or lower.

The Court: You have the record, the records are here and were offered.

Mr. Green: I don't think the records were offered.

Mr. Swacker: Several government witnesses have already testified to that same matter.

The Court: I will let you do it. I will permit it under the same understanding.

Mr. Green: If there is any higher or lower, we are glad to have it.

The Court: I will let it in subject to the same understanding and direction this verification is to be made, and unless it is made, I will strike it out.

Mr. Chambers: And it is necessary for me to object.

The Court: Very well.

Mr. Green: It may be understood that this objection goes to all this testimony; we don't raise that point.

Mr. Chambers: I don't know whether it will make a record or not, unless the court says so.

The Court: Go ahead.

Mr. Green: Answer the question.

A. From 72 Baume to 85 Baume.

Q. Now, that refers to the blended unrefined naphtha from Kiefer and Drumright. Will you state what the vapor tensions on this blended unrefined naphtha shipped from Kiefer and Drumright was during the same period?

Mr. Chambers: We object to the question, for the reason it is incompetent and irrelevant; the witness not qualifying himself to answer the question; the witness shows it is hearsay and not the best evidence; the records of the parties taking the tests would be the best evidence.

The Court: It will be permitted under the same ruling.

A. Seven to ten pounds.

The Court: And with the understanding that counsel for the defense agree to follow this line by verification.

Q. Now, at the Port Arthur refinery in Texas of this defendant, what were your duties, say during the times laid in this indictment, prior to the time you were up here, the times you were at Port Arthur?

Mr. Green: Strike that.

Q. Will you state, prior to the time you came here temporarily with the Gypsy Company, when you were in Port Arthur?

A. From September 1, 1918 until April 15, 1919.

Q. Now, then, what were your duties during that period?

A. Assistant Superintendent.

Mr. Green: As I understand it, your honor, the records covering these shipments down there during the period from September, 1918 to April, 1919 are in evidence. Is that correct.

Mr. Gann: The unloading records and test sheets?

Mr. Green: Yes.

Mr. Gann: Those records are in.

The Court: As to where they are in, he may testify to them. I will overrule the objection.

Q. Now, then, I will ask you from the knowledge which comes to you, in your capacity as Assistant Superintendent of that plant, whether you are able to testify as to the Baume gravity and the vapor tension of these products, unrefined naphtha, the weathered and the blended, during the period that you have indicated? A. I am.

Mr. Chambers: We object to that. It is asking for a conclusion of the witness. The witness has not qualified himself to answer the question. The mere fact he is Assistant Superintendent and says he knows is not sufficient, and it is not the best evidence.

Mr. Green: I will undertake to qualify him further.

The Court: What date does he ask?

Mr. Chambers: September, 1918 to April, 1919.

The Court: Very well. It is conceded that the records are in evidence as to those matters. Let the record show it is conceded that the records are in evidence as to those matters.

Q. You may answer the question.

Mr. Chambers: He still has not qualified him.

The Court: You will have to show he is familiar with those records.

Mr. Green: Your honor, I want to make this point, that this knowledge—

The Court: I know, but when the records are in—

Mr. Green: What I mean, is this; this knowledge may have come—

The Court: I know. I am not going to let him testify to anything because he could commit perjury under that, and when confronted with it, he could say, "I was not testifying to those records."

Mr. Green: I will note my exceptions, and proceed the way the court has indicated. I don't think this will vary the record at all.

The Court: If he is going to testify from his knowledge, and the records here, he ought to testify to what the records are.

Mr. Green: Well, I won't press the matter, but I would like to have an exception.

The Court: Very well. Where were you during this period from September to April?

A. Port Arthur, Texas.

The Court: How did you get this information?

A. From the laboratory tests.

The Court: But when you examined, you went back to the time when you examined before?

A. No.

The Court: You just examined, then, certain days.

A. Yes, sir.

The Court: And that knowledge showed upon certain days, and don't cover all days?

A. Yes, sir.

Q. In saying "certain days" do you mean you had certain specified days, or in the course of business from time to time?

A. Just from time to time I examined the records.

The Court: As to the particular days on which you made the examination?

A. Yes, sir.

The Court: And when you made the examination, you didn't go back over the intermission covering the intervening days from the time of your last examination?

A. No, sir.

Q. Do you mean to say at no time you did not turn back and examine other days? A. No.

Q. I don't understand what you mean by "No"; you mean you did not turn back? A. Did not turn back.

Mr. Green: Your honor, I want my exception to go in.

The Court: He says he don't know. He says, "I know certain days." Certainly, you don't want him to testify to things he don't know.

Mr. Green: I don't want to argue, but I want the court to understand I am sincere in my belief, and, to be consistent, I want to have my exception.

The Court: Very well, you may have your exception.

Q. Now, are you familiar with these records that have been introduced in evidence of these shipments received there?

A. No, sir, I am not.

The Court: Now, the only information you have, is the information that you got when you would make examination on those particular dates? A. Yes, sir.

The Court: Very well, I sustain the objection.

Q. From such information and experience and observation as you have had with this material, are you able to state to the court that this product that has been received down there from time to time is, or is not, constant or fairly constant in its characteristics? A. It is not.

Mr. Chambers: I object. I move to strike the testimony, the answer, as being irrelevant, incompetent and immaterial, and the witness is not qualified to answer the question.

The Court: Why is he not qualified?

Mr. Chambers: He states all he knows is from the records he examined occasionally.

The Court: That is not the question now. They asked him, from his knowledge, whether or not it is constant.

Mr. Chambers: How could he say it is constant? He has not shown that he possessed the information, and how can he state when it is not shown that he had the information to know?

The Court: What?

Mr. Chambers: Let me get the objection in. It is not the best evidence.

The Court: No, you will not put any objection in there. What information have you got? Did you ever treat or handle this?

A. Not personally, no.

The Court: Very well. I will not permit that.

Mr. Green: Will your honor indulge me in one further question?

The Court. Very well.

Q. Are you able to state, from your observation and gen-

eral supervision of this business, are you able to state to the court that you know, independent of any records that may be there, or may not be there, that you know what is, what those figures are,—taking the minimum point and the maximum, give the range with reference, can you state to the jury what these products were answer yes or no?

Mr. Chambers: I object, as being incompetent, irrelevant and immaterial, for the further reason, the witness has not shown he is qualified, and for the further reason, it is asking a conclusion of the witness, and inasmuch as he has not personally had anything to do with inspection, and the only information he has is occasionally glancing at the records.

The Court: I don't think they have shown that he is sufficiently qualified to answer that question. If he treated the article as an expert, and a chemist, and could tell of his own knowledge, I would permit that.

By Mr. Green: Well your honor he did not do that personally because he had men under him to do that.

By the Court: Well now the only way that was that he occasionally examined the records but he didn't examine the records during that particular day. He didn't turn back to the last day he made the examination.

By Mr. Green: Here is our position, this man is an executive and an executive in order to manufacture this product it is our position that the executive is charged and is presumed by the court to know what is going on, and when he testifys he knows and gives a maximum and a minimum and tells the court—we feel that we are entitled to have it go to the jury with the understanding that the records are now in evidence.

By the Court: He has not examined them.

By Mr. Green: No but the records of these shipments are in evidence and he can be crossed on that.

By the Court: No I don't think so.

By Mr. Diggs: If the court please can we leave this branch of the evidence and have the witness examine it and then call him back.

By the Court: That is what I suggested a while ago. He can go and examine those books, they are in evidence. I will permit him to examine those books and the maximum is so and so and the minimum is so and so and I will permit that to go in evidence.

By Mr. Green: The only objection to that it interferes and I know—*alirhgt* I will just except.

By Mr. Chambers: What classes of oil were you inspector of?

By the Court: He didn't inspect any.

A. I was not inspector.

Q. In order it may be clear to the court and counsel state what your duties were during that period?

A. Supervisor as Assistant Supervisor of Manufacture.

By Mr. Green: We will proceed with the understanding that the exceptions go in.

By the Court: Very well I will point out a way you may get this evidence and I will let you proceed so that there may be no delay. If you had others to examine that I will let you introduce your experts on that examination so that if you don't have the hypothetical case at the close I will strike out all of the evidence.

By Mr. Green: I appreciate the remarks of the court but I think we are entitled to show it this way.

By the Court: If you are there is some law that will show me that. I have never yet with all the range of cases found but what there is some authority and if you will just show me—

By Mr. Green: I am not prepared to make that showing this morning because it didn't occur to me. I may be wrong about it and I can't put my hands on the books now so we will just proceed under the ruling of the court.

Q. Now when these products, unrefined naphtha, and blended unrefined naphtha and weather unrefined naphtha reached Port Arthur, state to the court and jury whether there more than one way of manufacturing or refining?

A. I know of two ways possibly, there are more.

Q. Will you state what those two ways are?

By Mr. Chambers: We object to that as incompetent, his question is to how many ways there are.

By the Court: If he knows two ways—there is no use of making these captious objections, there may be twenty ways and he only knows two.

By Mr. Chambers: But don't ask what ways were actually used in the manufacture.

By the Court: If you know of two ways used in that plant you can testify.

By Mr. Green: Your honor that was not my ques-

tion, I asked whether there was one or more ways that could be used.

By Mr. Chambers: That is what I was objecting to.

By the Court: Could be used?

By Mr. Green: Yes, if he knew there was two ways he might choose to use both of them and might choose to use only one of them.

By Mr. Chambers: My objection is it is incompetent what ways could be use- and not how many were used on this particular product. There might be 20 ways.

By the Court: Do you know how that product was treated?

A. I do.

By the Court: He can answer that.

By Mr. Green: Your honor does not quite get my point and I believe if your honor will let me ask these questions he can readily see what I am getting at. Although there may be two ways he is not required to use two ways and I want show what the two ways are. This man is an expert manufacturer.

By the Court: You must first lay the predicate and show how it was treated.

By Mr. Green: Your honor you don't get my point, when he is confronted there with handling this product with two possible methods in his opinion that he could use.

By the Court: Well you show first how he treated it and by what method it was and then you could show what other method.

By Mr. Green: He didn't necessary have to use them both.

By the Court: No, you must first lay your predicate.

By Mr. Green: If the Court will *list* just a minute—

By Mr. Diggs: Our purpose is to prove the method and then ask him which one of the methods superseded.

By Mr. Green: I propose to run the two methods out and show to the court and jury what our contention is.

By Mr. Diggs: In other words we propose to show there are two methods to do this and then to show one is the established method that was used in the plant.

By the Court: With that statement I will permit it.

By Mr. Green: And further to show—

By the Court: I will strike it out if you don't follow it up.

By Mr. Green: Alright.

Q. Now state what two methods the two principal methods used.

By the Court: No, the two approved methods.

By Mr. Green: I did not want to use that, but if the court suggests it I will gladly do so.

By Mr. Chambers: I object, incompetent, and irrelevant and immaterial and the witness has not been qualified to answer.

By the Court: Why?

By Mr. Chambers: He has not shown he knows the approved methods.

By the Court: He is a graduate chemist.

By Mr. Green: When?

A. 1907.

By Mr. Green: Where?

A. Pennsylvania State College.

By the Court: He is a graduate chemist. Objection is overruled.

A. Industrial chemistry.

Q. Specialize in that? A. Yes, sir.

By the Court: Go ahead.

Q. Now what are the two ways?

A. By blending and by distillation.

Q. Now we will take the blending methods when they arrived there?

By the Court: You can ask him what process he refined it.

By Mr. Green: That is my question.

Q. By what process did you use to manufacture or refine it, using the words *synonymously*.

By the Court: Do you mean the products shipped to these points?—shipped to Jenks and Drumright?

By Mr. Green: Yes, sir, the record shows I asked him that.

Q. Describe to the court the blending methods in so far as applied to the product commencing at the time the ears arrived in going through the method, put it in terms the court and jury and lawyers can understand?

A. When the cars were received at the refinery, they are first unloaded, in order to do that, it is necessary to raise the safety valve and allow any of the enclosed gas to escape, the dome cap is then removed and the outage then taken on the cars to determine the loss in transit. The temperature is taken at the same time. A sample boy from the laboratory comes and takes the samples of the car and takes the sample to the laboratory for further test. By this test is determined the method by which this car is to be handled, usually it shows impurities—

By the Court: I will not permit him to testify to that unless he knows of his own knowledge as to what these cars showed.

By Mr. Green: I am not asking him to testify to anything he does not know of his own knowledge.

By Mr. Chambers: His testimony shows he did not if the court pleases.

By Mr. Green: Your honor I am trying to stress that point. If the test showed impurities then what is done?

A. If the test shows impurities we know then into which tank to pump the material.

Q. Well what is done after these tests are taken, what is physically done with the cars, how are they handled?

A. They are unloaded.

Q. Well but prior to unloading, preparatory to unloading?

A. You mean to discharge the cars?

Q. Yes, this—is it or not dangerous?

A. The car is first cooled before unloading.

Q. Why? Explain to the court how that is done.

A. When the cars come in under hot weather they are put under a water spray in order to lower the temperature as much as possible to get the vapor tension as low as possible to do away with the maximum amount of loss.

Q. Explain to the court and jury how that would tend to reduce the loss?

A. The lower the temperature this can be handled, the less the loss.

Q. Is it not a fact—

By the Court: You mean it would be loss by evaporation? A. Yes.

Q. And is it not a fact that every time this commodity is handled whether in loading or unloading cars or pumping or disturbed in any way there is a waste or loss? A. Yes, sir.

Q. Explain that?

A. We can handle no material from our cars to tanks or from tanks to tank by a pump without loss.

By the Court: By evaporation?

A. By evaporation and leakage.

By the Court: The leakage depends mostly on the character of the vessels, the vessels and the pump valves and there is ce—

A. And there is a certain amount from the tank from which you wish to pump.

By the Court: Those are incidental, those are waste, incident with the handling?

A. Yes, sir.

Q. State to the court whether or not it is desirable—I will withdraw that question—what is your purpose of putting these cars under the sprays?

A. In order to lower the vapor pressure by cooling.

Q. That is the affect but what is your object in it?

A. To save the material.

Q. Now then you have the cars over there what time of day do you usually unload them?

A. We prefer to unload them early in the morning.

Q. Why?

A. Because the temperature is lowest at that time.

By the Court: Now that is the best time to unload them?

A. Yes, sir.

By the Court: Why?

A. Because it would not be practicable to unload them at night on account of labor.

By Mr. Green: I think—the witness stated early in the morning because it was cooler then.

By the Court: It would be cool at night and I assume they would not want to do it at night because labor is as not as available at night.

A. No, your honor because the cars absorb the heat of the day and it takes quite a while to cool them.

By the Court: You give them the benefit of the night to cool and then unload them early in the morning. You take into consideration all those things, the natural temperature to reduce the temperature of the tank car in transit.

Q. Now then resume from there and continue? Tell the court what you do?

A. The car is connected to a pumping out line. There is a pump situated very closely to the cars so that the material from the cars can flow into the suction pump. It [ ] then pumped into a tank. One of two or three tanks. There may be other materials, some unrefined naphtha, some heavy naphtha and some gasoline and tests are taken from the tanks from time to time to determine in what manner we can bring this tank up to certain specifications.

Q. You say tests are taken, how are those tests *tank*?

A. A boy comes from the laboratory and takes the sample, takes it to the laboratory, gravity, and distillation tests and other tests taken to determine whether it will meet any given specifications for gasoline.

Q. When you have the result of that test, what do you do?

A. We know whether we can use this material to blend with some heavier material to bring it to a desired specification or we can put in some other material into that received and bring it up to a desired specification.

Q. Well knowing that do you not proceed to blend?

A. We do.

Q. Then what do you do? Explain how you blend it?

A. By pumping different materials into a tank and into it air or we may pump with two pumps into a tank and depend upon mixing of their own accord.

Q. Now you have done that do you not take further tests?

A. We test the material.

Q. For what purpose?

A. To determine all through the operation if it has reached a state of refinement to meet our specification.

Q. All through the operation? A. Yes, sir.

Q. And those tests and those samples that are taken are tested by your laboratory? A. They are.

Q. Now I will ask you—I will strike that—he has already answered it. Now without asking you whether you do it in the handling, do you in handling this material, I will ask you is the fact of this, assuming that you intend a purpose to refine this product by putting it through steam still, explain to the court and jury how you would proceed.

A. The material is charged into the distillation unit consisting of steam stills and condensors and heat is applied to the stills through the agency of steam and the distillation proceeds the lower boiling point comes over first and the higher boiling point over last; the first material recovered is not available for the manufacture of any gasoline except through blending and the second material either left in the still or recovered by distillation would pass perhaps some of our specifications and could be used as gasoline, however, in carrying

on this distillation we would experience about forty per cent loss of this material, twenty per cent additional would require blending and we would have a recovery of about twenty per cent.

Q. Now I will ask you as a refiner in charge of your plant, or that plant, seeking to handle this product in the most profitable and economical way, which of those two methods would you choose? A. Blending.

Q. Why, explain to the court and jury?

A. Because of the much lower cost of operation and because of less loss. We would lose in blending about five per cent and in distillation about forty per cent.

Q. I will ask you whether in your time or within—I will change the question because it might convey the wrong impression to the court. During your time as assistant superintendent in charge of the supervision of this refining and handling these products from Kiefer, Drumright and Jenks was any of it unrefined naphtha ever sold as gasoline? A. It has not.

Q. One further question, in handling this unrefined naphtha, do you ever follow the distillation process or have you in any instance? A. We have.

Q. When do you do that and why do you do it?

A. Only because we are in very straightened circumstances for some certain material.

Q. Well I will ask you this, suppose you were to get a car that were badly off color?

A. We would put that through the steam stills.

Q. With the result however, that you would sustain the heavy loss? A. Yes.

Q. I will ask you whether or not blending in a refinery extends to other products than gasoline?

A. Practically every product from a refinery.

Q. In bringing it—

A. To required specifications, either kerosene, fuel oils, lubricating oil, Solar oils, practically every other material.

Q. I will ask you whether or not it is common practice, in making most, if not all, of the refined articles, to bring them to their refined state by blending?

A. I do not think it would be possible to run a refinery without blending.

Q. I will ask you, then, as an expert, is, or is not, blending an important and intrical part of refining? A. It is.

Q. Have you or not stood and watched tests, laboratory tests of this unrefined naphtha made at Port Arthur?

A. I have.

Q. Now, I am going to ask this question, and don't answer it until the court has had an opportunity to rule on it.

Those tests that you have stood and watched made, are you able to give the court the physical characteristics, using for the purpose of this examination maximum and minimum?

Mr. Chambers: We object, as immaterial and incompetent.

The Court: I will permit him to testify how many tests he has seen made.

Mr. Green: And over what period of time.

The Court: No, how many tests, of his own knowledge, he has seen made.

Mr. Chambers: Limiting it to the product in the indictment.

The Court: Yes, how many tests you have seen made, how many times. If you have seen it a dozen times. That is a physical fact.

Mr. Chambers: I will ask you to qualify him as to the product named in the indictment.

Q. When I refer to the tests you have seen made, I refer to the test of this unrefined naphtha, brought in order that you may get at, the weathered, unrefined naphtha from Jenks, and the unrefined naphtha from Kiefer and Drumright, a blended article?

The Court: How many personal tests, how many tests would you say that you have seen made personally?

A. Pretty hard for me to say; covering a number of years.

The Court: Have you seen as many as a dozen?

A. Yes, sir.

The Court: Fifteen?

A. Yes, sir.

The Court: Twenty?

Q. Can't you state to the court your best recollection on how many you have seen?

The Court: How many years have you been there?

A. From September first until April 15th.

The Court: That would be eight months, during that time, in your recollection how many during a month?

A. In that eight months I would say a dozen times.

The Court: I will permit him to state he probably has seen it a dozen times in eight months, and then I will let you ask him if the tests varied, and if he knows of his own knowledge, he can state the variations, the high and the lowest point.

A. Judge, which test do you refer to?

The Court: You say you have seen about a dozen. I am talking about the twelve tests you say you saw.

Mr. Green: I want him to answer the question as to the weathered product from Jenks, and the other the blended product.

The Court: Of those tests, how many did you see from Jenks?

A. I could not say how many out of the twelve.

Q. How many out of the twelve from Drumright?

A. I could not say.

The Court: How many out of the twelve could you say you saw from Kiefer?

A. I could not say.

The Court: That seems to me to be too indefinite.

Mr. Green: I will not press it, but I would like to have an exception,—

The Court: I will let him answer it, but it is not definite enough to base a hypothetical question on.

Mr. Green: I don't like to press the matter, but if the court will permit him to answer, I think it is pertinent.

The Court: Well, do you know whether or not any of that particular twelve was from Jenks?

A. I do.

The Court: How many?

A. I know particularly, one.

The Court: Just one?

A. Yes, sir.

The Court: I will permit him to answer as to that particular one he saw from Jenks.

Q. Well, state what that—I will ask you first, what the Baume gravity was.

A. I can't give you, definitely, the Baume gravity on that one.

Q. Tell what the tests showed.

A. That the recovery on distillation was over ten per cent, about seventeen per cent loss in distillation, where it should not show more than two and one-half per cent. That is one idea that is in my mind when you run a distillation test—

Mr. Green: Just a moment.

The Court: That is your recollection as to that?

A. Yes, sir.

The Court: Have you any other recollection as to that test, other than that?

A. The gravity was taken, but I do not remember what the gravity was on that particular test.

The Court: Very well.

Q. Now, can you give the court the result of the tests on the blended—

The Court: Let me see. Do you remember any tests that you saw made from the commodity that was shipped from Kiefer?

A. One test that I remember.

The Court: Ask him specifically as to that.

A. The one time I have in mind on that test was that the recovery was greater than it is on unblended material.

The Court: How much was the recovery?

A. The recovery will vary—

The Court: How much did the recovery vary? What was the recovery on that one instance?

A. The recovery was about 88 per cent.

Q. Did you see—do you recall or do you remember now any test with reference to Drumright?

A. I do not know as to Drumright.

Mr. Green: Take the witness.

*Cross Examination by Mr. Payne.*

Q. Mr. Slater, you stated that upon arrival of the cars at Port Arthur, a test was made to determine which tank it would go into, and that it was determined as to whether it had impurities in it or not?

A. The tests are to determine whether it had impurities in it or not.

Q. Could you state the number of the tank it would be pumped into if it did have impurities in it? A. I cannot.

Q. Can you state the number of the tank if it did not have impurities in it? A. I can not.

The Court: Now, if it had impurities, it was pumped into one tank, and if it did not have impurities, it was pumped into another tank?

A. Yes, sir.

Q. That stuff that had impurities in it, what treatment did you give that?

A. Some of the material was treated and some steam stilled.

The Court: How did you determine now? You say some of the stuff that had impurities was blended and some steam stilled?

A. Yes, sir.

Q. Now, what brought about the determination, as to whether or not it would be steam stilled or blended?

A. The color was the principal thing that determined steam still; the amount you might say crude oil enclosed with the unrefined naphtha, the material that came from these plants. Usually we call it drip material.

The Court: Go ahead.

*By Mr. Payne.*

Q. I understood you to say you made an examination to determine whether the fluid had impurities, if it did have impurities, it was pumped into one tank and redistilled; if it did not have impurities, it was pumped into another tank for blending, is that correct?

A. I would have to look at my testimony to see.

The Court: What do you say now?

A. I say now the material arrived, it depends on the degree of impurities of the material received. If we think we can work it off without steam stilling, we do so, to avoid the loss.

Q. What is tank 829 used for? A. I could not say.

Q. What is tank 805 used for?

A. I could not say, usually used, I could not say positively, usually used as gasoline tank.

Q. Do you know whether any of this liquid from Port Arthur was pumped into tank 805? A. I could not say.

The Court: You say liquids from Port Arthur?

Mr. Payne: Liquids from Kiefer and Oklahoma, I meant to say.

A. The pump records will show that.

The Court: Suppose, I want to learn something about this while this is going on—suppose the tank comes in, the color was what you would call water white; what tank would you pump it into?

A. I could not say. That is a record for the pumpers.

The Court: What is the character of the pumping of that? What would that ordinarily be called?

A. The correct name is unrefined naphtha.

The Court: What do you call it?

A. We call it usually Kiefer gas.

The Court: What did you put it on the books as?

A. Should have been put on as unrefined gas, but I don't know what it was put on as.

The Court: You don't know?

A. No, sir, we considered the material available for gasoline.

The Court: What is that? You consider what?

A. We consider the material available for gasoline.

The Court: Go ahead.

Q. Now, as a matter of fact, Mr. Slater, have you any unrefined naphtha tanks in your plant?

A. We use our tanks for any purpose we may require.

Q. Have you any tanks in the plant which you designate as an unrefined naphtha tank?

A. No, we have not.

Q. Have you any tank in the plant you designate as crude naphtha tank? A. Nothing but a running tank.

Q. Will you explain the difference between crude naphtha and unrefined naphtha?

A. Crude naphtha is usually the first cut from the distillation of crude oil. Unrefined naphtha is the unstable product manufactured by compression and coming from casinghead gas, from gas wells and from separating tanks and weathered.

The Court: Now, let me ask a question. What would you call the process over here at Kiefer? I believe you are familiar with the process there, where they blended this containing product, or naphtha, whatever you call it, coming from Port Arthur?

A. Heavy naphtha.

The Court: To blend at Kiefer, and you blend that with the casinghead gas, or whatever you call it?

A. Condensate.

The Court: What would you call that process?

A. That was one step in refining.

The Court: That would be a process of refining?

A. I consider it one step in refining, not complete refining, but one step in refining.

The Court: Well, now the next step would be to reduce it to specifications for commercial gasoline?

A. No, the next step would be to reduce the vapor pressure required by the ruling of the Interstate Commerce Commission for transportation, which is the main purpose in blending at the plant here.

The Court: Now, suppose that when you blended it at Kiefer, it was of the white water color, and it would meet the specifications of the commercial gasoline, what would you call it then?

A. We would call it gasoline, but it can not be made to meet the specifications, except by blending a very large amount of material with it, and, in my opinion, there should not be over ten or twelve per cent of this material—

The Court: I am asking you, would you know the effect, would it be possible to ship that heavy naphtha and combine it with this casinghead gas product, would not it be practical from the combination to blend it?

A. It would not be practical.

The Court: But would it be possible to bring about a result that would meet the specifications of a commercial gasoline?

A. Not with the heavy naphtha which he shipped there.

The Court: Wouldn't it be—

A. It would be possible with certain grades of heavy naphtha, but I do not think it would be possible with that naphtha shipped here.

The Court: Here is the point, and I don't want the jury to attach any special significance to these questions. I am just trying to get in my mind. These questions I ask, the jury are not to treat them as any more specially significance than questions asked by counsel. Now, which would be more specific, in calling that product, an unfinished naphtha, or unrefined naphtha?

A. I would call it unfinished; in my mind, that is the better word.

Q. What is the nature of the material that you use at Port Arthur and blend with the liquid from Kiefer and other casinghead plants in Oklahoma?

A. We use something of everything, naphtha, painters' naphtha distillate, and use painters' naphtha and what we call cracked gasoline, but all of that is blended with a large amount of natural gasoline.

Q. That is the same stuff you ship north to Kiefer for blending?

A. No, sir, only painters' naphtha distillate and painters' naphtha, and cracked naphtha, but a large amount is straight run gasoline.

Q. Is it not a fact, in many instances you would ship painters' naphtha out of a certain tank, number 838, to Kief-

er, and on the same day you would use that same painters' naphtha in the same tank for blending at Port Arthur?

A. It may be possible, yes, sir.

Q. Don't you know it to be a fact?

A. No, sir; it is probable, however.

Q. Now, what is the purpose of sending this stuff down to Port Arthur? Is it for the purpose of bringing up this low stuff down there?

A. No; for the purpose of marketing the largest amount of gasoline.

Q. What is the process for the off color stuff put through?

A. If it is badly off color, it is put through a distillation process.

Q. Distilling process?

A. Yes, sir, mixed through crude naphtha with the refinery.

Q. And the stuff not off color? A. Blended.

Q. Or mixed with the other products, did you do anything else besides blend it or mix it? A. In all this material?

Q. In other words, is it not a fact that you have a tank there which you designate as gasoline tank, and is it not a fact that the stuff from Kiefer is brought down, and when it is not off color, it is pumped into that tank?

A. Maybe; I could not say.

Q. And is it not a fact, that stuff is frequently shipped out on the same day as gasoline?

A. We like to ship it out on the same day we received it, to avoid loss; but the greater length of time we keep it, the greater the loss.

Q. Is it not possible that you did that?

A. Wherever it was possible—

Q. If we had two buckets right here wouldn't it be possible for us to pour them together and mix them?

A. If you knew how, yes.

By Mr. Payne: That is all.

By the Court: Anything further on redirect examination?

By Mr. Green: Just one or two questions, your honor.

*Redirect Examination by Mr. Green.*

Q. You stated on cross examination you used the expression "available for gasoline," will you explain to the court and jury what you mean by that?

A. We have certain stocks at the refinery which are usable to make gasoline by different methods of refining.

Q. Then when you use the expression, available for gasoline, what do you mean?

A. I meant that it was available as a crude material.

Q. For what purpose?

A. For the manufacture of gasoline.

Q. I will ask you whether or not in the blending of this material at Port Arthur you confined your operations, you confined yourself to the materials that you used in blending at Kiefer, Drumright and Jenks, I mean to the heavy naphtha there? A. Will you repeat the question?

(Question read by the reporter.)

A. We do not.

Q. Now can you give the court and jury, can you state to the court and jury what percentage of this unrefined naphtha as shipped from Kiefer, Drumright, and Jenks is contained in the finished article, of gasoline as finally produced by your blending process, answer that yes or no? A. Yes.

Q. Will you please state?

A. From the different fields at present there is about 1800 barrels daily—

Q. No, no, you must misunderstand me, I am asking for percentages, I will restate the question. What percentage of unrefined naphtha that you receive from Kiefer, Drumright and Jenks is contained in the finished product gasoline that you produced at your plant at Port Arthur by blending?

A. It will vary—

By the Court: You mean what proportion?

By Mr. Green: Yes, what proportion.

A. From five to twelve and a half per cent.

Q. Five to twelve and one-half per cent of unrefined naphtha, what other article or articles do you use in the blending besides the unrefined naphtha and the heavy naphtha?

A. The compression gasoline recovered from distillation of crude oil in the steam stills.

Q. That is still run gasoline?

A. That is still run gasoline recovered by an auxiliary dispenser.

Q. Can you give the court the proportions of the various ingredients that go to make up the finished product that you call gasoline then, for commercial use? Are you able or not to do that? A. No, I am not able to do that.

Q. Without being mathematically accurate can you tell the court approximately the proportions that you find?

A. No, because practically every case varies.

Q. You have stated however that the portion of the unfinished unrefined naphtha that enters into that?

A. Yes, from five to twelve and a half per cent.

35. [Q.] What is the reason for bringing this product to Port Arthur, why did you bring it down to Port Arthur?

A. In order to market it.

Q. Can you market it in the state it is in up here?

A. No, sir.

Q. Why do you bring it to Port Arthur?

A. To blend off with other material.

Q. Explain to the court why you cannot blend it up here.

A. Because it will not pass the specifications for gasoline.

Q. Explain why you cannot blend it?

A. It would not pay us to ship enough blending material here in order to blend it off, this is a smaller amount and it is better to ship the smaller amount to the larger amount.

Q. And by blending it you include the heavy product, other than naphtha when you say you blend the material, do you refer to the still run gasoline? A. I do.

Q. Do you or not have that here at Jenks? A. We do not.

Q. Drumright and Kiefer? A. No, sir.

Q. Counsel on cross examination asked you if you did not ship right out of the same tank on the same day, I will ask if you ever put this unrefined naphtha into a tank and then shipped it out without having put it through a blending process and without having put it through a steam still in the manner which you described to the court and jury.

A. We have never put it without blending.

Q. Explain to the jury how it is blended when it is sent out the same day?

A. It is blended with a heavy material or material which will bring it up to the specifications, either in tanks or by agitation in pipe lines or by pumping or by settling or standing in tanks.

Q. I will ask you whether or not it is possible, I will ask you whether or not you have ever on occasion blended that in hulls of your vessels? A. I believe it has been.

Q. I will ask you whether those vessels are equipped for blending?

A. We can blend in the tanks of a vessel as well as the tanks on shore, simply a motion process and the motion of the boat will properly mix the commodities but a sample has to be taken and the material in the tanks must pass specifications before the shipment is approved.

Q. Before the boat leaves?

A. The boat can't leave until the shipment is approved.

Q. I will ask you in your opinion as an expert whether or not proper blending is a skillful or unskillful art in refin-

ing, I will ask you whether or not you can answer that question? A. I can.

Q. Now, then, I will ask you to answer the question?

A. Blending is an operation carried on under skillful men, under the direction of skillful men.

Q. I will ask you the further question whether or not proper blending requires years of practical experience in a refinery? A. It certainly does.

Q. I will ask you whether or not as compared with making gasoline by the distillation process whether or not blending does or does not require more skill than the distillation if you know?

By the Court: You mean by blending process that it requires more skill than by distillation.

By Mr. Green: To do it accurately and properly, yes.

A. Well——

By the Court: If he knows.

Q. Do you know?

A. I will have to answer that in an undirect method. I think a man in charge of a blending plant will utilize more material than a man simply knows how to run a distillation plant. The machinery plant will use more than the blending process.

The Court: Now, the skilled man, the knowledge of blending.

A. Is gained from experience.

The Court: Is gained from experience, and the accuracy depends on how much economies there is in it?

A. Yes, sir, and the laboratory test.

The Court: So the experience, the amount of experience relates more as to the amount of economy in the loss of the material in blending?

A. Yes, sir.

The Court: Go ahead.

Q. I will ask if the amount of the loss is a matter which the refineries take into consideration seriously in their operations? A. Very seriously.

Q. Now, I will ask you the further question, whether or not the product from Kiefer, Drumright and Jenks that you do put through the stills, whether or not, in order to utilize that material, even though it is put through the stills, it is necessary to blend? A. A portion of it, yes, sir.

Q. I will ask you this further question, whether or not

it is possible, in this day and time, to run a refinery without using the process of blending in bringing the materials to the various refined articles?

A. If it is possible, I do not know it.

Q. Well, answer the question; you are an expert?

A. 13 years, but I never heard of it being done.

Q. I will ask you whether or not a refinery did not do those things—that did not do those things, could run in a way where they would not, as we ordinarily say, go broke from losses? A. No, I do not think so.

The Court: Would not be an efficient administration?

A. No, sir.

The Court: Any further questions?

Mr. Green: I think that is all.

*Further Cross Examination by Mr. Payne.*

Q. Mr. Slater, will you state what scientific books on casinghead gasoline you have read?

A. I cannot give most of them, I have read some by Mr. Burrill and Seibert, and Westcott's handbook on casinghead gasoline, and those are the principal ones.

Q. In any of those books is the term unrefined naphtha used as applied to the product of a compression gasoline plant?

A. I don't know; I have never seen it.

Q. You have never seen it? A. No, sir.

The Court: And you say you have read those books?

A. Yes, sir, may be there, but I could not recall it.

Q. What do they call the product?

A. In some cases it is called gasoline, some cases casing-head gasoline, and I believe in some casinghead naphtha and called naphtha.

Q. State where you saw it called casinghead naphtha.

Mr. Green: I want him to finish the answer.

The Court: We will take a recess. Those are standard books. You may have them and show the witness the book. He is entitled to have them to refer to. He states it may be there and not recall it, and that may be true.

Mr. Swacker: May I suggest that they did not allow this witness to testify as an expert on casinghead gasoline and now they ask him—

The Court: You went into it. This contemplates the blending with the casinghead product. I will permit him to do that.

We will take a recess now until 1:45, and, gentlemen of the jury, you are instructed that you are permitted to separate, under the usual instructions and precautions.

All right, let the jury pass out. The spectators will keep their seats.

Whereupon, court took a recess until 1:45 p. m. of the same day.

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AFTERNOON SESSION, 1:45 P. M.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, same parties as heretofore, the jury having been called by the clerk, and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

WILLIAM A. SLATER, recalled for further cross examination.

*Recross Examination by Mr. Payne.*

Q. Mr. Slater, are these the works that you refer to in your testimony this morning? (handing witness books)

A. Yes, sir.

Q. State what they are please?

A. This is a bulletin from the Department of Interior, Bureau of Mines, written for the general information of the public.

Q. By whom? A. By Burrell, Stibert, and Ogerthell.

Q. What is the other?

A. The other is the hand book on casinghead by Westcott.

Q. I will not ask you to state whether those works use the term unrefined naphtha in the connection with the compression of casinghead gas? A. Not that I know of.

Q. Have you ever read Dykema on recovery of gasoline from casinghead gas?

A. I have looked through it but I have never read it.

Q. You spoke of the product shipped southbound from Oklahoma by the Gypsy Oil Company as not being marketable. Just what is there about it that renders it unmarketable?

A. Some of the material is bad in color. Most of the materials contain too large a percentage of low boiling point hydro carbons.

Q. Now, is it or [] it not a fact that a great deal of similar liquid is marketed as gasoline. A. I do not know.

By Mr. Payne: That is all.

(Witness dismissed)

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Thereupon, S. G. SANDERSON, produced and sworn and examined as a witness, for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. State your name? A. S. G. Sanderson.

Q. Where do you reside? A. Tulsa.

Q. What is your occupation?

A. General superintendent of the Gypsy Oil Company, gasoline department, and the Gulf Refining Company, gasoline department.

Q. How long have you been such general superintendent?

A. Since August 1, 1919.

Q. Since August 1, 1919? A. Yes, sir.

Q. Did you succeed W. P. Donovan on his death?

A. No, sir, Mr. Slater did.

Q. Mr. Slater succeeded him temporarily and you succeeded Mr. Slater? A. Yes, sir.

Q. You refer to the Gulf Gasoline Department, where?

A. At Louisiana, Texas.

Q. How long have you been engaged in the casinghead industry? A. Since September, 1913.

Q. Was that very shortly after the plant was established at Kiefer?

A. That is the main plant in construction at that time.

Q. And how long did you remain connected with that Kiefer plant?

A. Remained there until September, 1916.

Q. And then what did you do?

A. Went to Cleveland, Oklahoma.

Q. Went to Cleveland. What is there at Cleveland?

A. Casinghead gasoline plant there.

Q. Of the Gypsy Oil Company also? A. Yes, sir.

Q. What did you do there?

A. Looked after the material and helped with the construction of that plant.

Q. What did you do after that?

A. February 15, 1917, went to Naborton, Louisiana.

Q. What did you do there?

A. Looked after the construction work of the Gulf Refining Company gasoline department.

Q. And came back here, as you said, after Mr. Donovan's death?

A. I came here August 1st, 1919.

Q. Now, what did you do at Kiefer during the three years you were there?

A. I was day man, I looked after the loading and general work, anything that was to be done, in the way of labor, or any such work at all.

Q. Did you have occasion to test the material shipped to Port Arthur from there?

A. Yes, sir; that is, I made gravity tests and vapor tension tests.

Q. How many such tests did you make?

A. Oh, I made thousands of them, I guess.

Q. Can you state from memory, without regard to records, as a matter of knowledge, what the range, first vapor tension, and second, Baume' gravity, of the materials so shipped from Kiefer to Port Arthur was?

A. The vapor tension test would run from seven to ten pounds; that is—not of the drip but from the casinghead plant.

Q. That would be the blended material, consisting of what percentage of naphtha and what per cent of the casinghead?

A. Yes, sir, about thirty per cent crude naphtha and seventy per cent casinghead.

Q. And what would the gravity of the blended article run?

A. Vary from sixty-six Baume' gravity to eighty Baume' gravity.

Q. Would sixty-six be an extraordinary low gravity, an unusual one, I mean? A. Yes, sir.

Q. What would be the typical range of it?

A. An average, I should say, would be from seventy-two to seventy-four.

Q. Seventy-two to seventy-four. Now, has the condition, manner of blending and the character of material continued down to the time that you took charge of the plant again after Mr. Donovan's death, not down to the present time, but down to the time you took charge of the plant?

A. Why, it would be practically the same, as far as I know.

Q. Have you made vapor tension tests at any time on unblended material such as was shipped from Jenks?

A. No, sir, not from the State of Oklahoma.

Q. You have not made vapor tension tests on that in the State of Oklahoma? A. No, sir.

Q. What is your qualifications, you have taken them on shipments from Louisiana? A. Yes, sir.

Q. It is the same general character of the casinghead?

A. It is made from casinghead gas, as to the character or constituency, I could not say.

Q. Its chemical composition, you don't know?

A. I don't know anything about that.

Q. But it is a hydro carbon compound?

A. Condensate from casinghead gas.

Q. Have you taken gravity tests on the unblended material? A. Yes, sir, I have.

Q. What would the range of gravity be on the unblended material?

By Mr. Payne: I object unless it was from Jenks.

Q. I asked you if you had taken the gravity test from Jenks? A. No, sir.

Q. Did not take the gravity tests from Jenks material?

A. No, sir.

Q. Have you taken the gravity on casinghead at Kiefer before blending? A. No, sir.

Q. Now, did you Mr. Sanderson, make and obtain and furnish Dr. Burrell and Dr. Garner and Dr. Shock and Dr. Bacon with samples of this material, both blended and unblended from Kiefer for experimental purposes? A. Yes, sir.

Q. And it was the same character of material as was previously shipped? A. Yes, sir.

By the Court: When did you do this?

By Mr. Swacker: Since this trial started.

A. Thursday, I believe it was.

Q. Did you furnish him some samples which were samples taken previously in the *regual* course of business for distillation?

A. Yes, sir, that was samples from shipments taken from Drumright, Oklahoma.

Q. What has been the practice with regard to keeping samples of the material.

A. Well, the practice was when I was at Kiefer to keep them until the cars arrived at Port Arthur, or if we needed sample bottles, rather, we kept to that time, if we didn't need sample bottles but they were always kept until the car arrived at Port Arthur.

Q. So you furnished these samples taken in the regular course to the gentlemen I have mentioned? A. Yes, sir.

By the Court: You mean some of the sample bottles that covered the shipment of cars, covered in this indictment?

A. No, sir, in November and December, 1919.

Q. How long would such samples be held in ordinary course?

A. Well, as I say, until the car arrived at Port Arthur and after that if we didn't need these sample bottles.

Q. You wouldn't at this time now since this trial started have any samples running back as far as a year ago, would you? A. No, sir.

By Mr. Swacker: That is all.

By Mr. Payne: No cross examination.

(Witness dismissed)

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Thereupon, GEORGE H. TABER, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Mr. Taber, will you please state your full name and residence?

A. George H. Taber, Pittsburgh, Pennsylvania.

Q. What is your business, Mr. Taber?

A. Petroleum refiner.

Q. You are connected with the Gulf Refining Company, are you? A. I am.

Q. In what capacity? A. Vice president.

Q. And what have to do as such vice president of the company with respect to the refineries?

A. I have full charge of all manufacturing of any kind.

Q. Now, will you please state your experience as a refiner of petroleum and its products and casinghead condensate?

A. I started in the petroleum business on April 1st, 1882, with the Queens County Oil Works at Long Island City, New York in charge of the office, there, about six months and was made assistant superintendent. I remained there about three years and the latter part of the time I was also superintendent of a neighboring plant, called the New York Refining Company. The name afterwards was changed to Thompson and Bedford. They were manufacturers of grease and lubricants, the Queens County Oil Works were manufacturers of paraffin oil and wax.

Q. Then what did you do?

A. On leaving the Queens County Oil Works in November, 1885, I entered the employment of the Eclipse Lubricating Oil Company at Franklin, Pennsylvania.

Q. In charge of the manufacture of what?

A. Paraffine oil and wax.

Q. And how long did you stay there, and what did you do there?

A. Well, I was shortly afterwards made assistant superintendent and then general superintendent. I remained there until December 31, 1891, a period of over six years, and then I went with the Atlantic Refining Company of Philadelphia, in charge of the lubricating business. I built the lubricating works there in which I introduced original features since adopted in the business, and ran the plant. While I was still there, I was made general superintendent of the Lubricating and Paraffine Department of the company.

Q. And what did you do then?

A. I left there in September, 1903, after an employment of twelve years, and went with the Gulf Refining Company as general manager, in charge, among other things, of all manufacturing, and in the last two or three years I was made vice-president of the company, with practically the same duties which I still discharge.

Q. What experience and connection with the Gulf Refining Company did you have with respect to the construction and operation of gasoline plants, and also with the Gypsy Oil Company, if any.

A. Well, I started the Gypsy Oil Gasoline plant at Kiefer; I had charge of the construction of it and the running of it from the beginning, and still have that charge.

Q. You have had supervision during the entire period of time since its construction?

A. From the time the plans were started, to the present time.

Q. Is that true of all the gasoline plants of the Gypsy Oil Company? A. That is true.

Q. What has been your particular duty with respect to the refining end of the Gulf Refining Company?

A. I have simply been responsible for the result and have had full control and charge of it.

Q. Now, during your experience, how long a period of time did your experience cover?

A. Thirty-eight years the first of this month.

Q. Have you had occasion, during that time, to study the nomenclature of the industry?

A. I gave particular attention to that study from the beginning; that interested me more than any other part of the business.

Q. What did you do?

A. At the beginning of the Queens County plant, I made yield and cost statements and prepared reports covering it, and at that time I viewed the nomenclature used in the work, so as to prevent misunderstanding on the part of anybody in regard to what was designated.

Q. Where did you get your knowledge concerning the proper terminology to apply?

A. Most of it originated with me, and I also talked with people interested in the business, read everything I found on the subject, and pursued it with my other occupation, and with every company I have been connected with, I have rearranged the nomenclature of the oils and given new names to the old oils and names to new oils.

Q. What do you mean by new oils?

A. There were new articles that were manufactured, oils that had not been previously made, had no name in the business.

Q. Has there been an evolution of the business during the 38 years during the course of which new articles were manufactured all together from oil?

A. There certainly have and some of them I originated.

Q. What have you studied in the way of literature on the subject?

A. Always from the beginning, read with eagerness anything I could find on the subject.

Q. What is there of such a character you could read and did read of this description?

A. The first book I remember, Allens Organic Analysis, volume 2, which was the best treatise at that time, the next thing that was S. F. Peckham's reports connected with the census of 1880, issued in 1885, by the Department of the Interior.

Q. Without dealing particularly with the authors at this moment I meant to ask you to state the character of the publications?

A. Technical books on the subject of manufacture and the usage of petroleum, and treatises on the apparatus in the use and manufacture and test of petroleum and its products.

Q. Have you also had occasion to read current trade papers on the subject?

A. Current trade papers and the government publications and bulletins of technical societies with which I am connected.

Q. Have you had anything to do with the publication or editing of papers on the subject yourself, and books?

A. Yes, sir.

Q. What have you had to do in that respect?

A. I think it was in 1815—

Q. 19 you mean—

A. 1915, I mean, I was asked by the authors of Bacon and Hamor's work on petroleum to read the proof which I did critically and made many suggestions to them in regard to the contents of the book.

Q. What was the name of that publication?

A. Treatise on petroleum, in two volumes; they are considered today the most comprehensive and the best work on the subject of petroleum.

Q. Known as American Petroleum Industry?

A. That sounds like the name.

Q. Are these the volumes you refer to? (Exhibit volumes to the witness.) A. Those appear to be the volumes.

Q. And that is the name?

A. American Petroleum Industry, Bacon and Hamor.

Q. You say your services in such revision are stated in the preface of volume one?

A. In the preface of volume one.

Q. What field do those books cover? The entire field of the petroleum industry?

A. The entire range from the geological part of the production to the shipping of the finished product, and to some extent their uses.

Q. Now, have you had anything to do with other publications—is that the publication—is this last publication that you have been talking about used as a text book in the study of the subject

A. I am unable to say, of my own knowledge, whether it is used in institutions of learning. I know it is a book that is very widely used and quoted.

Q. Well, have you had anything to do with any text books on the subject?

A. In the year 1917, I think it was, I was requested by the chairman of the International Correspondence School to revise the manuscript of a proposed text book on the manufacture of petroleum, which I did.

Q. What was the name of that book, do you know?

A. No, it was a text book for the Scranton Correspondence School.

Q. What subject does that deal with?

A. With the manufacture of petroleum.

Q. That is just the refining end of the business, as different from the previous work?

A. Just the refining practice. It was limited to that.

Q. Have you reviewed manuscript of others on the work yet unpublished?

A. I recently reviewed the manuscript written on a forthcoming work by Hamor and Padgett on the *evaluation* of petroleum and natural gas.

Q. Have you done anything in the way of writing yourself on the subject?

A. I have written a good many papers on the subject, but mostly for private consumption.

Q. Are you a member of any technical society?

A. The American Society of Mechanical Engineers, the Franklin Institute, the Society of Chemical Industry and the American Chemical Society, that I recall.

Q. Does your membership in those societies afford you contact with persons particularly versed in this subject?

A. It does, to a considerable extent, it affords me their publications which deal with a wide range of subjects which pertain to the petroleum business.

Q. Mr. Tabor, I would like for you to describe—

By Mr. Swacker: Is there any desire to cross examine Mr. Tabor on his qualification as an expert at this time?

By Mr. Payne: No.

Q. Mr. Tabor, I would like for you to describe in comprehensive and yet simple as possible way the art of refining and what the products known as gasoline and naphtha are, and unrefined naphtha—or with respect to the last, just give the other first?

A. There are many different processes of refined crude oil but the process best known and in use is to take the crude oil in the condition it comes out of the ground—

Q. Mr. Tabor, will you speak a little louder and slower?

A. The ordinary way of refining of crude oil is to take it practically in the condition it comes out of the ground and charge it in horizontal cylindrical tanks, very much like horizontal boilers but without tubes. This still is over a furnace from which the fire boils the oil in the still and it passes over as a vapor and the vapor passes through tubes submerged in water which condenses the vapor into liquid. In the case of boilers charged with water the distillate is all one character. It boils about 210 to 212 depending on the altitude and the product from beginning to end is practically the same, just water. Crude oil is a substance made up of a large number of different liquids and when it is boiled the first vapor coming over partakes principally of the lighter portions of oils of lower tensions, these are lighter in color and lighter in weight per gallon—then gradually as the heat gets greater the temperature rises and the product that comes over is heavier in weight and darker in color and have more body. From the beginning of the business it was customary to call all the condensed portion of the vapor down to the point where they are used—where it is used for making kerosene or lamp oil, naphtha, that is what it is called in the generic and family name applied to the whole product specifically that you may see everything that came over until the gravity was about 52

by the Baume' Scale the crude naphtha product, any product that came after that went into the lamp oil, this crude product was divided up to suit the demands of the customers and that division was generally made in a steam still which is a horizontal cylinder, but instead of using fire to boil the oil, free steam was blown in to the bottom of the still through perforated tanks. By using steam instead of fire it was possible to make a separation and a better separation was made than in the first fire stills distillation and easier to make and course the steam still dealt with the lighter portions of the distillate from the crude oil. Now take from the early day and that comes from reading literature. I quote from Peckam, census report, 1885, it is stated it was in common refinery work about 15 per cent of the naphtha came from crude oil from one hundred barrels of crude oil, fifteen barrels naphtha made and out of that fifteen barrels of naphtha, about one-half a barrel one-half per cent of the whole crude was made into gasoline, the great part went into what was called naphtha, actually specific naphtha which took the family name. And that has been the strict technical name for those oils ever since, and it is so called in all the authoritative literature on the subject, Government publications and others. The gasoline, the amount of gasoline made, as you will see, was very small, from 100 barrels of crude, there would be a half barrel of gasoline that was made from 100 barrels of crude. And that was around 76 to 80 gravity and it was used to make gas, that is what gave it its name, because it was used to make gas in the gas machines of the Springfield type. These were used by people that lived in the country and put up near their houses to light their houses with, and it is simply a process of forcing air through a body of this very light gasoline. The gasoline might be—you might saturate a can of sawdust and they generally used some absorbent earth that would hold the gasoline, and then force air through this earth or sawdust, and that was what was called carburet the air, and made it so it would burn and give a very good light. Those plants are still in use today, and that was, for a long time, the only thing called gasoline. *It would make it so it would burn and give a very good light. Those plants are still in use today. And that was what, for a long time, was the only thing called gasoline;* that was 76 to 80 Baume gravity. That continued until automobiles came into use, and when they did, gasoline was used to propel them. It was, of course, used in a little different way, the different mixtures, than where it is used for burning; the air is mixed so as to make an explosive mixture rather than a mixture that would burn slowly. And that continued, until by and by the automobiles came along so fast it

run the gasoline--there wasn't gasoline enough to supply them and then they had to go to the naphtha to get something heavier, but they called that gasoline, because the people who used gasoline knew nothing about the designations, proper designations of petroleum, and their carburetors at that time had been made to use this very light material; so the people that had the material didn't know it was naphtha, they called it gasoline. Then the manufacturers had to make their carburetors so they would burn the heavier material, until finally, in 1885, according to the census report, where one part in thirty was naphtha, the whole naphtha product was prepared, that is, thirty parts of naphtha, and they called it gasoline, and more than that, they put some kerosene in it, and that meant the automobile people had to change their carburetor to burn heavier and heavier material, but they still called it gasoline. That is the proper name for it isn't gasoline, from the technical standpoint. The automobile business has run away with the petroleum business. People in the crude oil business attempted to keep up with the automobile requirements. A great deal of oil is wasted that way. It not only has run away with the whole business, but what we would call the terminology of the business, that is the name. They dominate the names used in the gasoline business, dominate the whole oil business, and they call the product all sorts of names; some call it benzine, they talk about benzine buggies; some call it naphtha; some gasoline, and some use the name gas for short. We, as refiners, have to know all those names. We have to recognize it under whatever name is used, and we also have to differentiate when the material is ordered for other purposes, apart from that.

Q. You haven't said where gasoline stoves came in?

A. The light material was used for gasoline stoves, then a little heavier was called stove naphtha. Naphtha is a name much applied to the material used in stoves where they burn gasoline with a wick.

Q. Where did those come in? Ahead of the automobile?

A. Yes.

Q. After this Springfield machine came in?

A. Yes, which are still in use.

Q. And where did what is called naphtha launch come in?

A. That come along the same line as automobiles.

Q. Where in the history of things, did it come in with the automobile before or after, or where?

A. I am not able to state exactly.

Q. Is it the same material?

A. Yes, sir, it is the same material.

Q. The same material the automobilists use is also called naphtha when used by a launch? A. The same material.

Q. What effect did the advent of the automobile demand on the business have on the art of refining?

A. I say that many refineries devoted their attention to making automobile gasoline to the exclusion of all other things, *sacrificed* everything else, and in the manufacture of the product they put in a supply of kerosene and even had bensol and coal tar, may be coal tar naphtha, and in order to supply the demand, the Cracking process was invented, which involved the use of every oil every distillant which otherwise would have sold for first oil and burned, were changed into material similar in its usage to the material distilled from the crude oil in the ordinary way.

Q. Explain how they did that, if I understand you, to get the gasoline out of something more suitable for other material than making gasoline?

A. Get the material, get the gasoline, and there are several processes, probably different somewhat from the Cracking, but the products are sold for gasoline.

Q. And what is this Cracking process?

A. The Cracking process is another name for destructive distillation. Now, in the distillation I have been describing, it is just a separation. It is just as if you mixed together some light gasoline and some what I call naphtha, and then some benzine and some kerosene oil and some lubricating oil; you mix them altogether in the still and then build a fire under the still and run them off slowly, and if you run them off carefully enough you get pretty near what you started with. That is what a fractional distillation means. They can't do it exactly, but they get it as near as they can.

Now, when you make a destructive distillation, it starts with the heavy oil, and by keeping a pressure on the still, but in making, as the Cracking process, pressure is put on the still which runs and causes a heavy oil to be heated to a temperature higher than you could have the pressure; that is a higher temperature than ordinarily would be necessary to distill it, if distilled at ordinary temperatures in the open still, and in so doing, the oil is broken up in the latter product; the heavy oil is broken up into light oil, which didn't exist in the previous distillation. That is, it was actually made by the excess heat used. Now, there are many methods of doing that work, but that is the essential principle. Another way of making gasoline which has a limited use, because it is a patented process, is charging heavy oil into a dis—into a still and distilling it by the andro-discosuf-shock, the best known process of this is called the McAfee process. That process differs from the Cracking process, gives a naphtha which is sweet and light in color and seemingly just like the gasoline you get from crude oil distilled in the ordinary way, and you can make

it from a heavy oil that the ordinary test shows has no gasoline in it at all.

Q. Now, *the*, is naphtha produced from anything else but crude petroleum oil?

A. I have spoken of naphtha; that is a naphtha made from coal tar products called benzol; then there is a naphtha made from shale, which is very similar to the naphtha made from crude petroleum, and then recent sources of naphtha pretty generally understood, especially in this country, is naphtha made from natural gas or casinghead gasoline. Now, there are three processes I have in mind by which that is made, and one process, and that is more usually applied to natural gas, it is called the absorption process. That consists in passing the natural gas under a pressure through cooling it or through cooled light oil which absorbs a certain amount of naphtha which is carried in that case, and then the oil which is taken off of that naphtha is heated, and the naphtha distills off and is collected and that is known as absorption naphtha, perhaps some called it absorption gasoline.

Q. Speaking of that, Mr. Tabor, have you, in the course of your experience, watched patents issued on processes to be used in connection with refining?

A. I tried to keep a line on all the important ones.

Q. Is this last process that you described the subject of a patent?

A. It is the subject of a patent issued to George M. Saybolt of Bayonne, New Jersey.

Q. Who is Mr. Saybolt?

A. Mr. Saybolt is an oil expert of international reputation who has probably had possibly forty-three to five years' experience in the business. He was originally an oil tester, and as such invented the Saybolt tester, which has had a wide use, and when I first knew him in 1882 he was an inspector for the Standard Oil Company, and at that time he introduced many new instruments, such as the viscosity meters. [viscosimeter.]

Q. And is he also the inventor of this machine known as the Saybolt chromometer? For taking the color of oil?

A. Yes, sir, and of many other instruments not generally known.

Q. It is also called a colorimeter?

A. It is also called colorimeter, but the proper name is chromometer.

Q. Are you familiar with the patent specifications of Mr. Saybolt's invention?

A. I have read them many times.

By Mr. Payne: I object to this, the purpose of an

expert witness to give an opinion upon a hypothetical fact which assumes a fact shown from the testimony.

By the Court: What is your idea of this?

By Mr. Swacker: I am going to show how Mr. Saybolt used the term naphtha in his patent, that is my purpose and my idea is an expert witness is not confined to the testimony before he testifies; that is erroneous, the best class of expert witness is a man that is expert in a particular art and tells his knowledge of that art and let it be applied by itself to the evidence but it may be recapitulated finally by a question on the evidence.

By the Court: I think this would have a tendency to confuse the jury.

By Mr. Swacker: I will leave it at this time.

Q. You described the absorption process of recovery or manufacturing of naphtha gas, what other processes?

A. The best known next process is the compression process and that could be used for taking naphtha from natural gas by thus you have naphtha products from casinghead gasoline.

Q. For taking casinghead—for taking naphtha products from casinghead gasoline or taking casinghead gas?

A. Casinghead gas?

By the Court: This is the compression product?

By Mr. Swacker: This is the process—yes, sir.

Q. This is the process used by the Gypsy Oil Company?

A. Yes, sir.

Q. That casinghead gas that you speak of is it scientifically known whether it is part of the petroleum at all?

A. Comes from the, the opposing theories, some people say it generally comes from the rock strata where crude oil comes from and some think it is distilled off from crude oil in the ground and other ways entirely independent but nobody knows what goes on in the ground, at least I don't know.

Q. What other methods of producing naphtha are there?

A. There are some refrigerating processes, take the naphtha from the casinghead gas and the natural gas the material—but that is comparatively unimportant and not used much, not much used to my knowledge.

Q. What is meant by the phrase naphtha fractions?

A. The fractional distillation of crude petroleum and is the separation made of the distillant coming from the still turned into the different tanks to serve different purposes and they just separate and come off in fractions because they go—they all go to make up all crude oil and the parts I have stated which come off from the crude oil from the beginning

of distillation, down to what goes into burning oil is called the naphtha fractions, that is the generic or family name for it.

Q. Now then is there, is this process of compression confined to casinghead gas or is it applied on like gas otherwise?

A. It is and can be and also this absorption process can be applied to any gas containing in condensable liquid.

Q. Well and under what circumstances is it so applied.

A. With relation to the petroleum business it is applied in the refineries who use the gas which passes off from the still and condenses by ordinary condenser which should otherwise go off in the air. That is taken from the gas pipes in the still by suction and compression and passes through the condenser in the same way as is done in the casinghead gas from compression plant and product utilized in a general refinery.

Q. Is that gas you speak of which fails to condense practically the same as the casinghead gas? A. Yes, sir.

Q. And when compressed into a liquid it is the same material as the material compressed at the compression plant at the casinghead plant?

A. Some of it, depends entirely upon the character of the distillation in the still. As soon as the gas is taken, if it is taken from the still where they are carrying on the fractional distillation as I first described it is precisely the same material as the casinghead product but if it comes from the still where the Cracking process is used, it is quite different in character.

Q. Is it always though a material out of which to make gasoline?

A. It is always a material which can be used in blending, in blends which meets gasoline within the limits. In cases I have been familiar with it is possible to use all that has been produced in gasoline plants.

Q. Now is the same gas found otherwise than these two manners that you have spoken of that is casinghead— What do you call this gas that fails to condense in refining?

By Mr. Payne: Your honor, I object, the facts have been brought out in the case I believe the examination of an expert that the defense is limited to the facts which have been shown.

By the Court: I think so unless there is some special reason.

By Mr. Swacker: We are going to establish technically just what this material is.

By the Court: He can testify what it is and give his reasons for it.

By Mr. Payne: Why doesn't he confine himself to the facts in the case?

By the Court: Yes. I think you are going on the outside under a dissertation which tends to confuse the jury. Now let him give his reasons and if there is any reasons for extending the territory that will become material.

Q. Then, Mr. Tabor, will you state what is gasoline, describe it technically what it is?

A. Gasoline in the strict technical sense of the word is the product which is substantially 76 to 80 gravity as described and refined distillate from petroleum which is suitable for use in carbureting air for making a gas suitable for burning in private dwellings.

Q. That is what the article of commerce known as gasoline is?

A. That is one of the articles of commerce known as gasoline for that particular purpose, that is the original name. Now there are other articles of commerce and that is what has been developed by the automobile business. For that purpose we will say that gasoline is a product, a combination of products of naphtha produced from crude oil, natural gas, casinghead gas and other source which are made suitable for use in the general run of automobiles which use suction carbureters. It has to be suitable for such use, that is not material that will run one make of car but any make of car that comes along equipped with the ordinary suction carburetor today.

Q. You are thoroughly familiar with this material that was produced by the Gypsy Company at Kiefer, Drumright and Jenks are you? A. Yes, in a general way.

Q. Is that material gasoline or not?

A. It doesn't fulfill either of the specifications for gasoline which I have given. I do not consider it gasoline. I consider it unrefined naphtha.

Q. Why do you call it unrefined naphtha?

A. Because it requires refining to fit it for the market.

Q. Is it sold or has it been sold by the Gypsy Company commercially?

A. The Gypsy Company, when they started in business, attempted to market it direct to customers in the northwest and failed, tried it long enough to be satisfied it was a failure. The losses from tank cars, which we knew, occurred, was large. The losses claimed by customers was still larger than we could believe actually occurred, and it was found impractical to continue it.

Q. Now, is this casinghead sometimes blended by producers to make commercial products? A. Undoubtedly.

Q. What kind of blend do they make in order to make such an article?

A. Well, all sorts of blends are made, of greater or less

desirability; some people blend it with kerosene and some with heavy naphtha, and they seem to find a market for it. I have known people who made it that would not market it under their own name, but sold it to jobbers. It is only a question of using the right blending material to blend it, but a great many don't use the right blending materials.

Q. Well, is this product they make—will this product they make run a car that comes within the definition you gave a while ago, that would run a car?

A. Why, undoubtedly it would have to run a car in some way or they could not dispose of it.

Q. Now, in order to make a gasoline, is it necessary to make a different blend than that blend used by the Gypsy Company at Drumright and Kiefer? A. It is.

Q. Will the plain weathered casinghead unblended run a car at all?

A. If it is weathered enough it will, but not such as we weather it. We weather it to about ten pounds vapor pressure.

Q. How much loss would be involved to weather it down to a point where it would be practical to run a car?

A. I should guess if you take off seventy per cent, the other thirty per cent would be practicable.

Q. None of this material that the Gypsy Company is accustomed to ship is weathered down to that test?

A. We weather is sufficiently to ship in order to come within the I. C. C. rules, which is ten pounds.

Q. About how much more weathering is that, when you say weather it down to thirty per cent, do you say thirty per cent of that?

A. I said down to ten pounds vapor pressure.

Q. But you said that could be further weathered to some point where it would run a car?

A. Yes, sir, and I said that was merely an estimate, by taking off seventy per cent and leaving thirty per cent, it might not do it. I would not guarantee it to run the car satisfactory. That would depend as to the times, that is, at all times and under all conditions.

Q. Now, what is the object of the purpose of the blending that is done by the Gypsy Company?

A. Simply, it is blended sufficiently to get the product to the refinery where it is—where there is suitable material for putting it into to make this gasoline.

Q. What do you mean by getting it, sufficient to get it there?

A. To be able to ship it in ordinary tank cars under the rules of the I. C. C. rules, simply reduce the vapor tension to

ten pounds, but it is not a refined product suitable for market, but it is shipped to the refinery where the real blending and refining is done.

Q. And this plant, in such plants as has done the refining?

A. No, sir, it is not scientifically blended, but put with a convenient heavy material to reduce the vapor tension to a point where you can get it to the refinery and there handle it properly and blend it as it should be.

Q. What function does the—does it provide in the way of preventing loss?

A. Why, it prevents excessive evaporation and reduces the danger from fire in transportation.

Q. Is that merely an alternative or other substitute of weathering?

A. If we could not get it to the refinery in any other way and could not use it where it was, that could be the only recourse, to weather it, that is, distill it. The only difference between weathering and distilling is that in weather distillation it goes off in the air and is lost.

Q. What is the reason for sometimes weathering and sometimes blending.

A. It depends entirely on the nature of the material; the material from some wells in some fields, what we consider a reasonable amount of weathering by reducing it to ten pound vapor tension and in other fields, if we tried to weather it, we lose so much we feel it is necessary to bring heavy material to make the body heavier and mix it with it and pay the freight on the heavy material there, and pay the freight on the heavy material back, for the purpose of being able to transport this.

Q. What does the term refining cover in the petroleum industry or business?

A. It covers the ordinary definition of the word refining with some additions. The ordinary meaning of refining is to purify, make fine, remove extraneous matter; remove things that don't belong in the matter. Shall I define that or go on and define—

Q. Go on and define that, and state how it is used in the refining business.

A. Shall I define that as far as I have gone, in the application as far as I have gone?

Q. Yes, sir.

A. What is a very simple matter—a very simple illustration I have in mind, you are allowed to ship with every bushel of grain one pint of chaff, and if you had a bushel of grain and a quart of chaff and wanted to make the shipment, you might take out a pint of the chaff, or if you did not want to do that, you might add a bushel of grain that had no chaff in

it at all. If you take a bushel of grain that had no chaff in it and add it to a bushel of grain that had two pints of chaff, then you have two pints of chaff in two bushels of grain. You can do it either way. The same way as in the refining process; that would not ordinarily be called refining, but take a matter of refining, for instance, the silver—

Q. Would not ordinarily be called refining as applied to grain?

A. Yes, sir. But it is the same process as used in the refining world. I explain it because it is a simple illustration. I think to get the refining process—

Sterling silver is  $92\frac{1}{2}$  per cent pure silver and  $7\frac{1}{2}$  per cent copper. Now, if you have got a mixture, if you have got one hundred pounds of what is found to be sterling silver, and seven and a half per cent copper, there is no extraneous matter in it; but if you happen to have one hundred pounds of mixture, put out to be sterling silver, and found there is eight pounds of copper, then you would have some extraneous matter. Now, there would be two ways of refining that copper. One would be to take so much out of that copper, so what was in there would not be more than  $7\frac{1}{2}$  part of the hundredth of the whole; or you could add enough pure silver to it so there would not be more than the proportion of seven and one-half, and when you do it either way, you will comply with the specifications, and either would be refining it. Either taking out a part of the impurity or adding so much of a pure material to make up the specifications.

Q. Now, is that species of treatment also applied to the petroleum industry?

A. Yes, sir. Now, in the petroleum business we extend the meaning of refining a little further. We consider as refining anything which improves the quality of an oil or a petroleum products and fits it for the market. All we call refining, whatever the process is, and there are many different refining processes we use, is dependent upon the character of the material, and what you want to make it for and what you want to sell it for, and what your customers demand.

Q. How do you describe the material before it has reached this finished marketable stage, I mean name of the material?

A. It is unrefined, sometimes called crude product, sometimes unfinished product, but unrefined is a general name that applies to it.

Q. Now, what is the difficulty with this casinghead material, in the way of it not being gasoline, as you say?

A. It has too much light end to have a permanent character. That is to say, it is too wasteful to use, too much loss in handling.

Q. How do you describe it technically in the refining business, the fault?

A. The fault, it has too much light end in it. It has too much light end in it to be used in suction carburetors and too much light end for safety, and too much light end for use economically—such excessive loss by evaporation.

Q. What is the term used to measure the degree of such light ends? A. That is determined by distillation test.

Q. What term is applied to the measure of such quality of the material?

A. Why, it is determined by the boiling at a given temperature and when you do distill it and try to collect the parts, there is a large part of it lost. An ordinary specification for gasoline is when you use the glass or flask, such as is over there on the floor, you must get back ninety-five per cent of the one hundred parts you start with, you must have 95 of the parts. Now, the unrefined naphtha shipped by the Gypsy Company from Kiefer and Drumright and Jenks to Port Arthur, you wouldn't get over eighty-eight per cent and possibly eighty per cent back, which makes a great loss. The specifications of the United States Government, United States Navy and Aviation gasoline, these are specifications the government chemists test it and distill it and in this way with the flask, and if you don't have ninety-five per cent of what you start with, they reject it and refuse to receive it on contract. Consequently, you have to make your product comply with that requirement, and the only way to do is to take off the light end.

Q. What about the requirements of the different states?

A. My understanding is, there is a law requiring certain specifications in the State of Oklahoma, and I understand there is one in Texas.

Mr. Chambers: We object.

The Court: That is in regard to what may be sold.

The law is the best evidence; he is not an expert. I will exclude that.

Q. Are there any states in which the Gulf Refining Company has been unable to sell a product such as this for the reason of not conforming to the requirements?

By Mr. Chambers: Yes, we make the same objection.

By the Court: Yes, you cannot prove a law indirectly by the exclusion.

Q. Is this material to your knowledge dealt in at all as an article of commerce, what we have been describing this material shipped from Jenks, Drumright and Kiefer?

A. I have known that and even lighter products to be

shipped for special purposes, such as fuel in welding. There is a product called gasco, a very light portion but it is usually shipped in pressure tanks.

Q. But that is of higher vapor tension than this?

A. Oh, yes, and this could only be used for purposes like that.

Q. Well, it is sometimes sold to refiners by the producers?

A. Oh, yes, anything that is capable of blending is salable to refineries and this is part of it.

Q. Now, as far as you have knowledge, how is it described when sold to refineries?

A. Under a multiplicity of names, casinghead naphtha, casinghead gasoline and other names that do not occur to me for the moment.

Q. You heard the expression, raw casinghead?

A. That is a very common term, there is some different opinion as to how it is used, some people apply it to a casing-head gasoline that is unweathered and unblended and others apply it to one that has been weathered and not blended. My practice is to apply it to products that have been neither weathered nor blended.

Q. Well, now how is that product further characterized by some other adjective than raw?

A. It is characterized by all sorts of adjectives but not any I think that I use.

Q. Is it sometimes called wild?

A. Very common designation but I do not use it. I do not use it. Very common use among the men working there for the reason that if you have that gasoline in a tank car and take the dome off the car would be empty, shoot off in the air and that is why it is called wild. So hard to chain up and hold.

Q. What are the common designations when it is blended?

A. Well, as I say, some people still call it raw casinghead.

Q. No, I am talking about when it is blended?

A. Called blended gasoline. We call it as we ship it, blended, it is unrefined naphtha. Other people have other names for it.

Q. Is the—is it qualified by the character of the material with which it is blended?

A. Yes, sir, kerosene blend, and naphtha blends and so forth.

By Mr. Swaecker: If your honor please, we have a number of instruments which are used in this art with which we sought to illustrate some of these matters. If the court thinks it would make it clearer by doing that we would be glad to have them put over here and Mr. Taber can describe them, we have what we call the Engler flask

still which is used for these distillation tests, hydrometers and vapor tension gauges and a number of other instruments utilized in connection with this business—

By Mr. Payne: That might be a discussion that might be very interesting but I can't see how it would have any evidentiary bearing in this case.

By the Court: I don't think so either, the question is whether it is gasoline, whether that commodity shipped down there is unrefined naphtha or gasoline and whether this defendant, through its officers violated that rate.

By Mr. Swacker: I don't know whether I asked you before but if I did not I will ask you again.

Q. Is unrefined naphtha in your judgment and your knowledge of these terms and material, the proper name or not for this particular material shipped from Kiefer, Jenks and Drumright to Port Arthur?

A. I consider it a perfectly proper designation for it.

Q. As between the name gasoline and unrefined naphtha which is the more accurate designation?

A. Unrefined naphtha between the two. The other would be satisfactory but certainly not gasoline.

By Mr. Swacker: You may cross.

*Cross Examination by Mr. Payne.*

Q. Mr. Tabor, you spoke of the unblended casinghead gasoline produced at Jenks and you called it a gasoline of 76 to 80 gravity, is that correct

A. I did not, the record will show. Not intentionally.

Q. Just a moment ago you were asked what people called this product when it was blended with the casinghead and you stated it was blended gasoline, did you not, what was blended with the casinghead, whatever it is the record will show?

A. Well, you will have to tell me before I can answer it.

Q. Now is it not a fact that not only the blended casing-head gasoline that you shipped southbound but also the un-blended gasoline is of a higher grade and a higher quality than the naphtha that you blend with it?

A. You will have to define what you mean by higher, higher in what respect. It will go higher in the air if you open the top of the tank cars.

Q. Higher in every respect? A. No, sir, it is not.

Q. Now as a matter of fact don't you *debace* your south-bound shipments instead of refining them?

A. Certainly not. We make them marketable, that is why they are shipped south.

Q. I believe you say that you entered into the petroleum business in 1882? A. On April 1, 1882.

Q. And you didn't start shipping your product from Kiefer as unrefined naphtha until December 2, 1916, is that correct?

A. I am unable to supply the date, we didn't do that in the beginning certainly.

By Mr. Payne: That is all.

*Redirect Examination by Mr. Swacker.*

Q. Did you begin shipping it that way when a rate was published under the name of unrefined naphtha?

A. Yes, sir, we did.

By Mr. Swacker: That is all.

By the Court: I want to ask this witness some questions. Which would be a more accurate name to say, unrefined naphtha or unfinished naphtha?

A. If I fixed the designation I would prefer to call it unfinished. The name was given to us as unrefined and we accepted it as unfinished.

By the Court: But you say unrefined naphtha is more accurate than gasoline?

A. Yes, sir, because we consider gasoline in two senses as a finished product in every case.

By the Court: That is all.

(Witness excused.)

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Thereupon, GEORGE A. BURRELL, produced, sworn and examined as a witness for and on behalf of the defendant testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Colonel Burrell, please state your full name and place of residence? A. George A. Burrell, New York City.

Q. At the present time I am president of the Island Refining Corporation and vice president and general manager of the Bariton Refining Corporation.

Q. Are those concerns in any way related to the Gulf Refining Company? A. No.

Q. Mr. Burrell, will you please state your training and experience with relation to the petroleum industry and particularly with regard to the technology of the business?

A. I received the degree of chemical engineer from Ohio State University in the class of 1906. I received the degree of doctor of science of Wesleyan University. From 1906, until 1916, I was in the employ of the United States Bureau of

mines and first laboratory work having to do with the solid fuel investigation; then in work having to do with the prevention of explosives [explosions] in mines, particularly ventilation problems; and from 1912 to 1916, part of my work had to do with the study and investigation of the natural gas gasoline industry. In 1916, I left the bureau of mines and for almost a year, among other things built, owned and operated natural gas gasoline plants. In 1917 I entered the service of the United States army and had charge of the research division of the chemical warfare service.

Q. Now just what was that research of chemical war board, what would it consist of?

A. Organization that had to do with the development, invention and device of all sorts of gas, masks, poisonous gas and all sorts of devices used in the art of chemical warfare.

Q. What was it composed of, whom?

A. It was composed of scientists eminent in their profession from all over the country and in fact it was the largest research division the world ever saw.

Q. How many of them were there?

A. About fifteen hundred technical men and about five hundred in the administration division, clerks, bookkeepers and accountants and purchasing agents, etc.

Q. How many of the technical men were there eminent in the profession?

A. They were the highest in the profession.

Q. How many in the fifteen hundred would be regarded as eminent, I don't mean exactly but approximately?

A. I should say about one hundred.

Q. Did that embrace practically all of the eminent scientists of the subject in the United States? A. Yes, sir.

Q. And you were at the head of that research committee?

A. Yes, sir.

Q. And you directed and looked after their investigation did you? A. Yes, sir.

Q. Of their inventions? A. Yes, sir.

Q. Before this research, before you entered the war department research division, were you engaged in any professional business aside from this building and owning the plants that you spoke of?

A. I engaged in a general consulting business with particular reference to petroleum chemistry and petroleum engineering.

Q. As a consulting engineer in that field? A. Yes, sir.

Q. Now have you entered—upon your entering this research division of the war department were you commissioned and what? A. I had a commission as a colonel.

Q. As a result of the work done was there Congressional recognition of the work done by you?

A. Yes, sir, I received a distinguished service medal.

Q. Have you made any discoveries in this field of science?

A. Yes, sir.

Q. What were they?

A. One I have in mind had to do with the location of a supply of helium and the organization and the starting of that work. Helium is a substance found in natural gas, and used as a substitute for hydrogen in heavier than air craft, balloons, and dirigibles. It is non-inflammable and hence it has a great advantage over hydrogen. As a result of that work the war department spent about five million dollars toward extracting it and they have plants in operation at the present time.

Q. Did you make any discoveries in connection with this very gas we have been talking about, this casinghead gas?

A. Yes, sir.

Q. What did you do with that?

A. I was the first one to show the real composition of casinghead natural gas.

Q. What do you mean by real composition and how did you show it?

A. It was generally known that casinghead natural gas was essentially a mixture of paraffin hydro carbons. It wasn't generally known what they were and in what quantities they were. By means of what is known as fractional distillation, at low temperatures whereby liquid air is used I was able to separate this natural gas product, that is the casinghead natural gas into different components.

Q. What did you find the elemental composition of casinghead gas to be that way?

A. Mixture of paraffin hydro carbons with small quantities of carbon dioxides and nitrogen. The paraffin hydro carbons consists of the hydro carbons, methene, ethene, propane, normal butane, iso butane, pentane, hexane, heptane, octane, nonane, with small quantities of still higher hydro carbons.

Q. What process was it you used?

A. The process called fractional distillation at low temperature.

Q. That is with liquid air, at extremely low temperature?

A. Yes, sir.

Q. What temperature?

A. Liquid air with a temperature of 194 degrees below zero, the temperature was changed and constantly raised up to the temperature of zero, and the distillation made over this entire range.

Q. That is the *antithesis* of the usual process of distillation by heat? A. Yes, sir.

Q. When did you make this discovery?

A. That was during 1915, I think.

Q. Was that in connection with the research work for the bureau of mines?

A. It was in connection with the research work for the bureau of mines in connection with my work on the natural gas industry.

Q. Have you written on this subject? A. Yes, sir.

Q. What have you written?

A. I have published twenty or twenty-five publications at various times, I should say, some consisting of bulletins, technical publications, and magazines and magazine articles.

Q. Also written a book on gasoline?

A. Yes, sir, I wrote a book on gasoline.

Q. The bulletins you spoke of were bulletins which the United States Bureau of Mines published and disseminated?

A. Yes, sir.

Q. And they are in general circulation among the profession, are they? A. Yes, sir.

Q. Disregarding any question of modesty so far as yourself is concerned, they are accepted as an authoritative work of the Bureau of Mines, is that correct?

A. I think so. I will say this, there have been recent publications issued bringing the industry more up to date which are very good, which I consider equally as valuable, perhaps more valuable, than my earlier publications.

Q. That is, the Bureau of Mines is constantly getting from research work and as it gets sufficient volume of it, it issues bulletins? A. Yes, sir.

Q. And a number of the bulletins, you are the author of them? A. Yes, sir.

Q. And since you left there, it has continued to issue such bulletins? A. Yes, sir.

Q. Now, are you a member of any technical societies?

A. Yes, sir.

Q. What are they?

A. American Chemical Society, Society of Chemical Industry, the American Institute of Mining Engineers, American Petroleum Institute, Natural Gas Association of America. This Natural Gas Association—

Q. This Natural Gas Association of America, have you ever written any paper for it that has received, that was disseminated by it?

A. Yes, sir; I have written several publications for it, several articles for them.

Q. Well, does that organization have a system of awarding a prize for particular articles at regular intervals?

A. Each year they do that.

Q. Have you ever written articles which have taken that award?

A. My collaborator, Mr. Oberfell, and myself, received a prize last year.

Q. What was that article about?

A. It had to do with the testing of natural gas for gasoline content.

Q. Now, I suppose the question would seem superfluous, but are you familiar with the technical literature on the subject of the petroleum industry, and also especially pertaining to casinghead gas and condensate? A. Yes, sir.

Q. Aside from your function as officer of these several corporations you have named, are you engaged in the practice of your profession as a chemical engineer?

A. Yes, sir, to a limited extent.

Q. Just as a consulting engineer, is that correct?

A. Yes, sir, I am on the consulting staff of several of the large companies. I have under development a number of things pertaining to the industry.

Q. Have you any interest whatever in the outcome of this litigation here? A. None that I can see.

Q. You are not interested in the Gulf Refining Company yourself in any way, shape or form, are you? A. No.

Q. And you have no anticipation of this decision affecting you or your business, is that correct?

A. I cannot see any at the present time.

Q. What has been your experience with respect to refining of petroleum oil?

A. I have for about a year and a half operated a small refinery where about thirty people are employed, a regular refinery, so far as its operations are concerned, simply small so it is elastic and can easily be changed to suit the experimental refinery conditions; in that refinery, with a corps of experts, I have been studying refining problems for about a year and a half; as vice-president of Richmond-Levering Company. I have had charge in the last year and a half of the building of three refineries, I have attempted to follow the petroleum industry more or less during the past ten years.

Q. Have you studied refining as an element of general knowledge and science that you have been directly engaged on? A. Yes, sir.

Q. Will you say that blending is a refining process as applied to casinghead condensate, taken to a refinery and blended with still run gasoline?

A. I think it is, without any equivocation.

Q. You think it is—you know it is?

A. I know it is.

Q. Is blending an incident, a process rather, of refining, wholly unrelated to gasoline? A. Yes, sir.

Q. Has it been such for many years? A. It has.

Q. And is it an extra delicate art as compared to all other branches of the petroleum refining industry?

A. It is a branch that requires skill and experience in order to perform.

Q. Now, what has been the influence of blending on the gasoline production of the country since it has come into general practice, with regard to the casinghead product?

A. Just this: when I started to investigate the natural gas gasoline industry, it was at a time—about 1912—when the industry was just being commercialized. While gasoline had been extracted from natural gas in 1904, it wasn't until 1912 that several or many plants were put into operation and the industry started off on a real commercial basis. A great deal of difficulty was experienced in handling the light condensate at that time from compression plants, and in fact until the art of blending the casinghead gasoline with heavier refinery distillates was perfected, casinghead condensate was a problem and almost a drug on the market.

Q. Previous to this time, it had been a complete waste, had it?

A. There had been so little of it produced it wasn't enough to make a difference from the gasoline standpoint of the country.

Q. What effect did the art of blending have?

A. To make available for use as an automobile fuel a tremendous amount of natural gas gasoline.

Q. About how much would you say?

A. Approximately I should say in 1919, last year, about three hundred million gallons of natural gas gasoline were produced, the largest proportion of it being casinghead gasoline. This gasoline, in order to make it marketable, as motor fuel, was blended with heavy refinery distillate. Probably in the proportion of three parts of heavy refinery distillates to one part of casinghead gasoline, although it is difficult to give the exact figures, because refineries, many of them, or most of them, do not say very much about their practice in that respect but from my experience in visiting refineries I should say that this is a proper proportion. Then the three times as much as this heavy distillate was mixed with the natural gas gasoline making now available for automobile fuel, I am safe in saying between a half a million, a half a billion and a billion gallons of motor fuel. Now, the amount of motor fuel used in this country was in 1919 close to three and a half billion gallons, so the natural gas industry, through the instrument of blending, produced almost a third of the motor fuel of last year.

Q. Now, you said that blending was a process of refining, I would ask you to liken it to agriculture, would you say it was just as much a part of the art of refining for example, as planting or harvesting, or any other detail of agriculture?

A. I would certainly say that.

Q. Now, Mr. Burrell, will you please define the term naphtha, the name naphtha?

A. In its strictest sense, technically speaking, the best definition of naphtha is the light distillate which comes off from crude oil in the processes of refining, down to a kerosene cut, although some times a kerosene cut is included. Naphtha is also spoken of in reference to coal tar distillates, meaning a light, inflammable liquid, that first cut in the destructive distillation of coal.

Q. In the sense in which you have used it, is that the generic name? A. It is.

Q. Now, has it also a specific application?

A. Yes, it has a specific application.

Q. To what?

A. Particularly to the natural gas gasoline industry.

Q. In what way?

A. In that a certain distillate, speaking of it in terms of gravity, ranging perhaps from forty-eight or fifty gravity to fifty-six or sixty gravity, is used—is mixed with natural gas gasoline in the art of blending. It is also used to designate what is known as painters' or varnish makers' naphtha, and that is a distillate of approximately fifty-two to fifty-four gravity *Bohme*.

Q. It is one of the subdivisions of this general branch you have spoken of as first cut?

A. I prefer to use it that way.

Q. Now, will you define gasoline?

A. I prefer to define gasoline as a liquid inflammable substance or mixture of hydro-carbons suitable for use in an automobile engine of today. Now, I should say that certainly over ninety-five per cent of the gasoline that is used today is used in automobile engines. A small amount is used in making gasoline gas for lighting isolated residences, and similar places, and a small amount is used in stoves. Perhaps a better definition would be, an inflammable liquid, a mixture of hydro carbons suitable for use in any kind of vaporizers.

Q. What do you mean by suitable for use in vaporizing? I don't think that is very clear.

A. As I said over ninety-five per cent of the gasoline is used in the automobile engine. Now a gasoline stove is a vaporizer and one of these air gas machines is a vaporizer.

Q. What is vaporizer?

A. Evaporates, converts from the liquid to the vapor state.

Q. For burning the gas? A. Yes, sir.

Q. Is it an article of commerce a finished product of that character? Yes, sir.

Q. To be used in a vaporizer of some description?

A. Yes, sir.

Q. Whether a stove or launch or lighting machine or automobile? A. Yes, sir.

Q. Those that you have given are strictly technical definitions? A. Yes, sir.

Q. What is the fact as to confusion or otherwise in the nomenclature of the petroleum industry?

A. Great deal of confusion.

Q. What does it consist of?

A. There is more confusion in the popular mind or proper use of the word than in the scientific literature although in the literature some confusion exists, for instance in the public mind the term gas is used, I presume that more people than otherwise drive up to a curb and will ask for five or ten or fifteen gallons of gas and one would hesitate to say what particular term the public would designate for gasoline in ten or fifteen years from now.

Q. What is the situation then, in the refining industry itself as to confusion or otherwise in the use of names?

A. Considerable confusion, for instance some refineries, particularly in the east I shall say, use the term unrefined naphtha, more often than they use the term crude benzine or gasoline in speaking of the first light distillate cut from petroleum.

Q. Now you have heard a witness—

A. Now in the west, I believe Oklahoma the term crude benzine is more widely used in refineries than gasoline.

Q. You heard a witness the other day did you who was connected with the Carter Oil Company testifying as to shipments made by his company to Baton Rouge, Louisiana, which were described as unfinished or unrefined naphtha?

By the Court: Crude, unfinished naphtha?

A. Yes.

Q. He described that material as running from three to fifteen per cent of the crude, is that correct?

A. I believe it is.

Q. Just what do you mean by topping? What is that?

A. By topping is usually meant the division of the crude into two portions, the light distillate consisting of gasoline and kerosene and a heavy distillate, the other portion consist-

ing of and called fuel oil. Frequently a topping plant goes a little further than that and refines the kerosene and gasoline into finished products but the words topping plant and skimming plant are widely used by different people as meaning the same thing, although a topping plant—

Q. Well was the material that he described merely the naphtha distillate or naphtha portion of the oil? A. Yes, sir.

Q. Now is that also sometimes called light and distillate? A. Yes, sir.

Q. Now is what—now in what respect is that material similar and in what respect different from the blended casinghead and the weathered gasinghead shipped from Oklahoma to Port Arthur?

A. It is essentially a similar material for this reason, that casinghead natural gas coming out of the earth and having been in contact with the oil brings out of the well the lighter portions of the crude oil. It is essentially the result of a distillation operation in the ground, this casinghead natural gas.

By the Court: Then there is a process of refining, in the ground?

A. That is one of the processes of refining, yes, sir.

Q. Well is it a complete refining or a partial refining?

A. A partial refining. It is in an unfinished state when it comes out of the ground. The casinghead natural gas that contains gasoline goes into the casinghead plant and sufficient pressure and low temperature is applied to the natural gas to precipitate or condense the material called gasoline, frequently called gasoline, sometimes called naphtha, or unrefined naphtha or unfinished naphtha. That gasoline, those lighter precipitants that condense a compression plant are similar to the lighter end distillates of a topping plant. It comes from the same source, the crude oil, whether the crude oil is refined in a refinery or in the ground.

Q. What as to their purpose or use or their destination or ultimate use?

A. Gasoline.

Q. Both go to make gasoline? A. Yes, sir.

Q. They are the same material, come from the same source and go to the same end, namely to make gasoline but simply arrived at by entirely different processes? A. Yes, sir.

Q. Are you acquainted with and familiar with those materials shipped from Kiefer, Jenks and Drumright to Port Arthur it—has that been embraced in the study you have made of the subject? A. Yes, sir.

Q. And you understand those blends to be where the material is blended thirty per cent naphtha, and the other seventy

per cent casinghead, and in the case of weathering merely weathered down to the vapor tension rules provided by the Interstate Commerce Commission, is that material gasoline or not? A. It is not.

Q. It is not gasoline? A. No, sir.

Q. It is very popularly called gasoline is it not?

A. Yes, it is, I have so called it myself.

Q. You have so called it that way yourself? A. Yes, sir.

Q. Do you generally use the word gasoline when you do?

A. I have frequently qualified it in perhaps two of my principal publications I qualified it so, bulletin 88, bureau of mines where I speak of the condensation of the gasoline from the natural gas and describe the compression method of making gasoline. I use the word gasoline almost entirely through the book but on practically the last page I make the statement that gasoline as herein used is very loosely applied and the material I am talking about is not gasoline and does not come under that category until properly prepared for market, I made the statement several times.

Q. When was that written? A. 1915.

Q. Long before any of the incidents connected with this situation arose?

A. It was written about 1914 and probably published in 1915, one of the early studies of natural gas gasoline business.

Q. Is the name unrefined naphtha a proper and appropriate description of the material shipped from Jenks, Drumright and Kiefer to Port Arthur?

A. I think it is. I think it is a proper name. If I had been asked to select a name for this I don't say I would have used unrefined naphtha, perhaps unfinished naphtha, but I will say unrefined naphtha is a proper name and gasoline is a wrong name.

Q. And is unrefined naphtha just as much an appropriate name of this material as it is of topping plant material that was described by the Carter Oil man? A. Yes.

By the Court: Well that is not used as unrefined naphtha.

By Mr. Swacker: I know it is not in that case.

By the Court: There is no evidence before this jury that it has ever been called that.

By Mr. Swacker: I beg your pardon, the Coffeyville situation was called that.

By the Court: I don't remember it that way.

By Mr. Swacker: We will call it to your honor's attention that it was.

By the Court: Well I don't remember it that way.

Q. You said that you would have chosen as a matter of preference if you were choosing rather the term unfinished rather than the term unrefined?

By the Court: You mean as a matter of preference or a matter of appropriateness?

A. Probably I would.

By the Court: More of appropriateness?

A. I will say that one is as appropriate as the other. I used the word condensate in my publication many times but for the general public to use the word condensate would mean they would have to be educated in that name and it would not convey to them the fact that this material was an inflammable material, but I really like the word condensate in speaking of the word of natural gas gasoline.

Q. You know there are some different practices of blending in the casinghead fields and industries with a view of making a grade of marketable gasoline? A. Yes, sir.

Q. How does that differ from this material?

A. Well one way to do it is to weather it or evaporate by simple exposure to the air, another by agitation or steaming or by blowing air through it, then mix a certain amount of naphtha with it in such proportions as to meet whatever gasoline specifications has to be met. Another way is to force naphtha into the condensing coils of a gasoline plant so the blend is made right in the plant, itself, and the mixture received in the accumulator tank is already blended.

Q. And when it is blended in that fashion is it usable for the purpose within the definition that you gave for gasoline?

A. Now raw casinghead gasoline as it is made at gasoline plants is not usable in an automobile. A certain mixture of naphtha and raw casinghead gasoline is. Now some place between these two extremes you are going to find a place where it just will work and just over the line where it will not work and it is pretty hard to generalize and say a particular combination will or will not run an automobile. I can say this in general, that a blend containing about thirty per cent naphtha and seventy per cent raw casinghead, the casinghead being the raw material that you produce at your Kiefer plant and your naphtha about 52 gravity will not run either a Packard car or a Dodge car. I have tried them both.

Q. What do you mean by—

A. Therefore it is not gasoline in my definition of the term. I think the casinghead gas itself will not run a car.

Q. Did you obtain some samples of this material and actually experiment with it. A. I did.

Q. What happened, just state your experiment?

Mr. Payne: I object, because the sample is not properly identified, and I have had no opportunity to see the sample nor know where it was made.

Mr. Swacker: We will cover that.

Q. Did you make distillations of the material so you could know whether it was material of the character here in question? A. I did.

Q. Did that distillation test develop that it was this material? A. I judge it was.

Q. Can you state what the distillation test was?

A. Yes, sir, I can.

Mr. Payne: I object to that. That is not a sufficient foundation for the particular character of gasoline extracted long after the period of the indictment. We have such samples; we did not offer them because we thought they were inadmissible, as to what happened after the date in the indictment.

The Court: He says now those samples—he is saying now the samples there that he tested them, and that they were the same material that has been proved here in evidence.

Q. You received this sample from Mr. Sanderson, that he had furnished them to you,—

The Court: That is immaterial. I don't think that would be competent on that theory, Mr. Swacker, but the question here in my mind,—now this witness is an expert, states these samples were presented to him and he tested them and they met the test of the commodity which is described here in evidence. Now, he has made the test of such commodity; that seems to me to come within the rule. If that is not within the rule, I will hear you on it. It seem to me as an expert, he tested this commodity, and says it is so and so, and that comes within the commodity the government sets up and describes as being shipped.

Mr. Payne: I should think, your honor, definite and specific evidence of that sort, a particular car in the indictment ought to be chosen, the colors and gravity and the distillation tests are all in evidence.

Mr. Swacker: They are not complete distillation tests.

The Court: What are the distillation tests in evidence?

A. The distillation tests taken in the laboratory.

Mr. Swacker: Which are only over and dry. But I will ask the witness one other question which will demonstrate.

Q. Is it possible for you to say, as a matter of scientific knowledge, from tests which you have made, that this is the particular character of material that has been testified to here as being the character of materials shipped from Kiefer, Jenks and Drumright?

A. Yes, because in my investigation of the industry, extending over a period of eight years, I have been afforded an excellent opportunity for making my studies. I have visited a great many plants and have examined a great many samples. I know the general character of the product produced in compression plants.

Q. Could a sample be run in on you, that you couldn't tell by the distillation tests that you have made, and would it make any difference?

A. I think it would be rather difficult.

Q. If it reached the distillation test, would you, by that, know it to be that grade of material?

A. I believe I would.

Mr. Swacker: Now, may I ask him to state the distillation test he found?

The Court: I believe I will let him state that if he has made tests, I will let him give his opinion to the jury.

Q. Then will you say, Mr. Burrell, if, in your opinion, the material furnished you for the demonstration that you made with an automobile was the same as this material shipped from Jenks, Drumright and Kiefer to Port Arthur?

A. In my opinion, it was.

Q. Now, then, will you state just what you did with respect to trying the material, to see what it would do on these cars?

A. Two automobiles were secured; one a Packard car and one a Dodge car.

Q. Why did you take two cars?

A. As representing first a high priced car, and second, a more common popular car. Three grades of gasoline were used, one the ordinary motor gasoline that one buys in a curb station at Tulsa. The other, the raw casinghead gasoline, such as is produced at the Kiefer plant of the Gypsy Oil Company before blending takes place. And third, a sample of the blended mixture of the unrefined naphtha which is shipped from the Kiefer plant to Port Arthur. The unrefined naphtha contained the naphtha and the raw casinghead in the same proportion as the unrefined naphtha that is shipped from Kiefer to Port

Arthur. A dozen or fifteen of us witnessed the test. Of course, we rode out to the place of demonstration, using the automobile gasoline which we purchased at the curb station. When we arrived in the country, where a particularly smooth, straight piece of road was available, we all got out of the machines, and the Tulsa curb gasoline was drained from the tank carburetor and system of the Packard car. Raw casinghead gasoline was put in its place and in the carburetor, so there was not any gasoline in that Packard car except that raw casinghead gasoline—we then adjusted the carburetor as best we could do in the car, and it would not start. The raw casinghead was drained from the car and the blended unrefined naphtha was put in.

Q. Did that raw material start the engine?

A. No, sir.

Q. It would not? A. No, sir.

Q. That was material that had been weathered down?

A. Yes, sir, had been weathered down.

Q. Now, you were starting to say something about the blended—

A. The raw casinghead was drained from the car and the blended put in the car with substantially the same result; the unrefined naphtha would not run that Packard car. In order to get the car to going, to give it as good a chance as possible, we put some of the Tulsa curb gasoline in the carburetor and the car ran a hundred yards, about, and stopped, and we got identically the same result with the Dodge car. Neither the Packard nor the Dodge would run. That is my general experience.

Q. That was your expectation?

A. Yes, sir, because in my experience and investigation of gasoline plants—I have visited many isolated places and have visited them in automobiles and at times run out of gasoline which I purchased at the curb station, and I have attempted to use the compression product. Some times I would use it by letting it evaporate until I lost about eighty per cent, and then on a cold day the other twenty per cent will run the car all right. I can not say just where you have to stop in the non-use of the casinghead product for automobiles, but in general the material is thoroughly unsatisfactory for that purpose.

Q. When you say the car ran about a hundred yards, after you had primed the carburetor with curb gasoline, that is just about the distance this priming would take it?

A. Yes, sir, simply used up the Tulsa curb gasoline in the carburetor.

Q. And as soon as that was done, the car stopped dead?

A. Yes, sir.

Q. And you say you have in times past, in your exper-

ience, weathered same down to twenty per cent, so it would run the car; that is not the same material as is shipped, is that correct? A. Quite correct.

Q. That would be an absolute absurd and ridiculous way to use the material? A. Absurd and wasteful.

Q. Have you in your present dealings, business dealings, had occasion to use the term or had used by anybody else in attempting to deal with you the term unfinished naphtha?

A. Yes, sir.

Q. What were the circumstances?

A. Our New Orleans plant is equipped to make gasoline, kerosene, naphtha, fuel oil, coke, and so forth. The light oil or topping plant was finished before the rest of the plant. We made crude distillate or unfinished naphtha and I was importuned by several other refineries to buy that unfinished naphtha, they could buy it at a cheaper price than gasoline or naphtha blends and refine it themselves, and in at least two cases I was asked to sell my unfinished naphtha.

Q. And have you had other designations made of the same thing by potential purchasers?

A. Yes, unrefined naphtha and crude benzine. I believe out west in the Mid-Continent refineries the word crude benzine is more often used than unfinished naphtha and unrefined naphtha inside of the refineries, although I am not sure about that; I haven't visited enough of the Mid-Continent refineries to make sure.

Q. Now, does your testimony relating to the recognition of this product as a result of tests, enable you to know it is the material talked about by the government's witnesses, wholly regardless of Mr. Slater's testimony this morning?

A. Yes, I took no exception to it whatever. I accept it as being the same material.

Mr. Gann: We have no objection to asking independent facts, but for him to subscribe to Mr. Slater's testimony as a whole.

The Court: I understand he takes Mr. Slater's testimony in consideration in giving his expert evidence.

Mr. Gann: He disassociates that in his mind and makes his conclusion on the other part.

A. Yes, I am able to do that.

Q. Not only that, but from your own knowledge, during the time you were in the field investigating that?

A. Absolutely.

Q. Now, you say that this material is positively not gasoline in the proper sense of the word. In what respect is it deficient?

A. All too volatile in character and vaporizes too readily.

Q. What has been your observation of this material in the sense of its recovery on distillation?

A. A very great loss on distillation.

Q. How much? What per cent?

A. This unrefined naphtha will lose probably an average of 15 per cent on distillation.

Q. What is the maximum loss on distillation you would regard as reasonable to be gasoline?

A. Well, I should say not over five per cent; but most gasoline will not lose that much on distillation, two to two and one-half per cent, is a fair figure, I believe.

Q. Now, you define naphtha as a generic term covering those portions of crude above kerosene. I will ask you what the fact is as to the scientific literature on the subject with which you are familiar?

A. The scientific literature makes frequent reference to the use of the term naphtha as a generic, comprehensive term, meaning that entire light oil distillate and including what is known today as the gasoline and naphtha as the latter is used specifically; naphtha is used a great deal by the literature as meaning that entire cut, that light distillate from crude oil, the first cut that comes off in the refinery.

Q. Now, are you familiar with the material known as still gas gasoline? A. I am.

Q. How does that resemble this material we are talking about? A. Resembles it very closely.

Q. How does it arise?

A. In the distillation of the crude oil in the refinery, the first material that comes off is a gas. The water in your condensing coil is not cold enough to condense that gas, so that it goes out of the system and escapes, unless one builds in the refinery a casinghead plant. In other words, put in a refinery some kind of a device as the Gypsy Oil Company has at Kiefer, so the gas coming off of these stills is trapped and caught in this still gas plant, and gasoline condensed out of this gas, adding a great deal to the economical operation of your refinery. If you—It is just capturing that part of the gasoline that would otherwise be lost.

Q. Now is that material gasoline when it is first liquefied?

By Mr. Payne: I object to that as having no issue in this case.

By the Court: I think the objection is well taken.

By Mr. Swacker: We are going to show what is done in the refinery to show it is the same product—same proposition.

By the Court: I think it is incompetent.

By Mr. Swacker: May I ask if it is blended in the refinery the same as this material—

By the Court: I don't think it has any relevancy, it might become so on cross examination.

By Mr. Swacker: I think it is permissible, to show the blending is a part of the refining as applied to it as in casinghead material all together.

By the Court: That—I don't understand it is controverted, that blending is a process of refining, I don't understand that is in the issue, the government concedes blending is refining.

By Mr. Payne: We contend they just mix it they don't refine it. We don't concede that.

By the Court: Very well, answer the question.

A. It is blended with the heavier distillate in the same way as the raw casinghead gasoline or unrefined naphtha which is sent in to that refinery.

Q. What is a comprehensive definition of refining, not a long one but as accurately and comprehensive as you can give?

A. I should *should* say the preparation of a raw material for market—for commercial use.

Q. The process of the *refining* have anything to do with it?

A. Yes, sir, the process going to make it up, the completed whole, completes the refining process, the parts refined in one place and another part refined in another place and another part refined in another building and finally comes in a refined product.

Q. Is it a fact whether it is essential to casinghead to make it usable at all that be blended or whether the gasoline produced at a refinery needs the casinghead to make it usable?

A. Well both things happen, each help the other.

Q. And to what extent does the casinghead help the gasoline, in other words how much casinghead can you blend into gasoline?

A. Well the general practice is to put in around twenty-five to thirty per cent casinghead. A great many people only put in five per cent or ten per cent. It is very difficult to say the average because the refineries don't publish their averages. Some put in five per cent and some ten per cent and some twenty-five and some thirty.

Q. Doesn't that often depend upon the material available? A. It does.

Q. On the quantity of the particular grade available?

A. Yes, indeed.

Q. Now I am not sure whether I covered this before but I will ask you once more if I haven't. You did say did you not that you regard unrefined naphtha as an appropriate description of this material?

By the Court: Yes, he answered that.

Q. And you said you regarded gasoline as an absolutely improper name for it? A. Yes.

By Mr. Swacker: That is all.

By Mr. Swacker: You may cross examine.

*Cross Examination by Mr. Payne.*

Q. Did you make a distillation test of the gasoline or the fluid which you attempted to use in your Packard and Dodge cars? A. I did.

Q. What was the initial and the end points?

A. I put notes down in my note book as we made the tests. The raw casinghead gasoline had an over point of 80 degrees on the Fahrenheit scale. It was dry at 216 degrees, the recovery was 83 per cent. The vapor pressure was 9 and 2 tenths pounds the *Beaume* gravity was 81.5 at 68 degrees. The blended material consisted of 30 per cent naphtha and seventy per cent raw casinghead. It had a vapor pressure of seven and one-tenth pounds; in other words almost three pounds under that ten pound limit required for transportation. The gravity *Beaume* scale was 76.3 degrees at 75 degrees Fahrenheit. The over point was 88 degrees. 57 per cent came off at 221 degrees; 67 per cent at 275 degrees; 76 per cent at 356 degrees; dry at 460 degrees; recovery 83 per cent.

Q. Now where did you get that casinghead gasoline?

A. The casinghead gasoline was handed over to me and the other collaborators in this trial by Mr. Sanderson.

Q. Do you know where he got it? A. I do.

Q. Where did he get it?

A. He got it from the Kiefer plant.

Q. Did he get any of the unblended casinghead gasoline from the Jenks plant? A. No, sir.

By Mr. Payne: I move all his evidence relating to the Kiefer unblended gasoline be stricken from the record because the evidence shows that every car shipped from Kiefer, not only those in the indictment but all the others were blended and therefore that test is entirely irrelevant in this case.

By the Court: What have you to say?

By Mr. Swacker: That is absolutely preposterous,

don't make any difference where it comes from whether Jenks or Drumright or Kiefer.

By the Court: Well.

By Mr. Swacker: Just a moment—

By the Court: I don't know whether there is any difference between the raw casinghead of the two plants?

A. I should say they are identical from my experience in casinghead plants.

By Mr. Payne: Your honor the evidence shows that the gas at Jenks is a lighter gas producing a lower gravity gasoline and therefore—

By the Court: Suppose you get—

A. May I explain that?

By the Court: Suppose you get some from Jenks and have him make the test.

By Mr. Swacker: Alright.

A. The raw gas is not necessarily the criterion of the quality of gasoline produced; that is a function of the plant operation.

Mr. Swacker: May we bring some of it in here and have it viewed right here?

The Court: No, but I will let him get some from the Jenks plant and make a test, and I will not pass on the motion in that respect until you cross examine him.

The Witness: I would suggest that the court and the jury witness this test.

The Court: Well, I think it is the safer rule to let the experts make their own tests.

Mr. Swacker: I might make this suggestion to your honor, that this was really a matter of judicial knowledge and one for the court alone to determine, and I think there is a good deal in the suggestion that it would be a very proper procedure for the court to witness such a demonstration to refresh his knowledge.

The Court: I think it is a question of fact. I will permit him to make the test from the Jenks plant.

Mr. Swacker: We made rather an exhaustive investigation of that subject, and Judge Diggs is quite full of it, and he is of the opinion it is a matter of judicial notice.

The Court: I will not strike that evidence now, but I will give them permission to make the test from the Jenks plant.

Mr. Payne: Now, will it be permissible for one of the government experts, also, to make a test?

The Court: Yes.

Mr. Swacker: We will be glad to take you along and have you witness it.

The Court: Yes, I will require that to be done, and let him make the test, too.

Mr. Swacker: We will take you out to Jenks and get the material and then see the test.

The Court: They will notify you, and let the government experts make the test with them. And I will leave it optional with you whether you cross examine him now or wait until after he makes the other test. I will let them put on another witness and proceed. It will probably save time for him to wait in his cross examination and let the other test be made and let him testify to it, and then cross examine him.

My Payne: Now, there are one or two additional questions that I want to take up, not bearing on that.

The Court: Very well. I will let you take your own course about it.

Mr. Payne: And then further cross examine him on the other matter later, is that satisfactory?

The Court: Very well.

Q. Now, the blending process; does the blending, as a matter of fact, consist of anything more than mixing two things together?

A. I should say that all of the blending operations performed in a refinery, including the blending of materials to make motor gasoline are essentially just that.

Q. Essentially just mixing?

A. But it embraces laboratory tests of the material; it embraces a knowledge of the handling of this light, inflammable dangerous material, in fact, the experience of the refinery force; it embraces the pumper's work and all regular essential refinery operation.

Q. Well, now, does it involve anything more than this?

A. I have answered that question.

Q. You have a particular quantity of material which may be somewhat higher in gravity than the particular material that you want to sell, and your idea is to lower the gravity of that material; you mix in with that a certain amount of another product which from previous experience will indicate about how much to go in, and after you mix it you take your test to see if you have got what you want, is that correct?

A. I insist the impression must not be left with the jury that this is a simple problem—

Q. Hold on, just answer my question.

A. The refinery work and experience—

Q. Answer the question. A. All right.

The Court: Read the question.

The Court Reporter: "Q. You have a particular quantity of material which may be somewhat higher in gravity than the particular material that you want to sell, and the idea is to lower the gravity of that material, you mix in with that a certain amount of another product which from previous experience will indicate about how much to go in, and after you mix it you take your test to see if you got what you want, is that correct?"

A. That is correct.

Q. Well, now, indicate just how that mixing of casinghead gasoline, with the naphtha that has been through the refinery process, that the refiner puts through in the refinery, either one or the other?

A. Well, refining, my definition of the refining is a process that prepares raw material for market.

The Court: What is the ordinary definition?

A. I think that is the ordinary definition.

The Court: The reason I asked you, you said that was your definition and the ordinary definition used in the books.

A. I think that is the definition used in the books and it is certainly not just the mixing of the two materials, the heavier and the lighter material, is the process that makes the final blending of the materials, now naphtha—now, it makes naphtha marketable, on the one hand, and casinghead marketable on the other, the one helps the other.

Q. Is it in a common—in a common sense definition refining means to remove impurities?

A. I don't believe that term is comprehensive enough, or embraces enough, because really there are many operations in refining independent of this blending which has to do with the preparation of the natural gas gasoline for the market, which will separate the impurities, remove the impurities all the way thru the refining process. For instance, the naphtha, the kerosene and the gasoline, are not finally mixed together.

Q. Now, when you say refining, don't you mean just what you say, that is, to make finer or to remove impurities?

A. I have answered that, I think, your honor.

Q. I will ask you, then, does the mixing of these two things together remove any impurities?

A. No, it doesn't in this particular case.

Q. Isn't it a mere dilution of a strong material with a weaker material?

A. Yes, that is true; I will admit that.

Q. So that under your definition, if you had a cup of strong tea and should put a little hot water in it, you would be refining it?

A. You are going too far afield; we are talking about refining.

Q. Can you mention any scientific works that refer to blending as refining?

A. I think I can, if you will give me a little time.

Q. I will give you a little time, and you may answer that later on. A. All right.

Q. I noticed in your direct examination that you used the expression natural gas gasoline at least four times.

A. I believe I did.

Q. Now, have you ever, in any of your works that you have written, used the term unrefined naphtha?

A. I don't think I have.

Q. As applying to the casinghead gasoline alone or blended?

A. I don't think I have, but I still insist that it is perfectly proper. I use the word condensate as being perhaps the best definition; and I much prefer unrefined naphtha to condensate for the question at issue.

Q. Mr. Burrell, are you the author of a paper published by the Derrick Publishing Company, entitled, "Technology of Natural Gas as Applied to Making Gasoline and Absorption Processes?" A. Yes, sir.

Q. On page three of that work did you say, "As a matter of fact, blended casinghead gasoline finds thousands of satisfied users?"

A. Yes, I believe I did, and all of the motor spirits, all of the automobile gasoline that comes out of the Gulf Refining Company, all the Gulf gasoline is blended with natural gas gasoline. The final product after they get through with it.

The Court: Will you read that again?

Q. "As a matter of fact, blended casinghead gasoline finds thousands of satisfied users."

A. As I said somewhere between a half billion and a billion gallons of that material was used last year.

Q. Mr. Burrell, did you make an address before the Engineers Club of Dayton during January, 1917? A. Yes, sir.

Q. Is this a correct transcript of it? A. It is.

Q. In that work did you say, "Natural gas gasoline is not only valuable because of the product itself, but because it is of very high grade, so high in fact that it is not economical to use it alone, but so it is mixed with low grade refinery naphtha and the so-called cracked gasoline, a great deal of which is being made at the present time?"

A. I did, and I will tell you what I meant by the term "high grade." Automobile makers have changed their carburetors as fuel became scarcer and scarcer, until today that carburetor is made to suit a much more lower grade fuel than the high grade fuel of a few years ago; so today the low grade fuel is a high grade fuel, because that high grade fuel of a few years ago will not operate an automobile satisfactory.

Q. So that in January, 1917, it was high grade fuel?

A. I should think that would be a little late. High grade was used in the sense of high in gravity. High grade really conveys a wrong impression unless one is familiar with casinghead gasoline.

Q. So that in this case according to your investigation and knowledge of the situation, is it not a fact what is refined if anything is, the low grade refinery product at Port Arthur?

A. I certainly would not admit that, one helps the other. You have each to help refine the other. The casinghead gasoline is made available for use by motor trade and the heavy distillate is made available each helping the other. One supplies the upper range in the boiling point, that is the naphtha and the other, the casinghead gasoline supplies the lower range, in other words makes an automobile engine easier to start—One helps the other.

Q. Now Mr. Burrell, is it true that what is shipped is gasoline of a very high grade, but may be properly called unrefined naphtha?

A. I would not say that. You are speaking of high grade gasoline. The material which you call high grade gasoline is really selling today in Oklahoma for four or five cents less than the regular automobile gasoline.

Q. That has been—

A. I simply wanted to make plain the conditions.

Q. Has that been just in the last few months?

A. Yes, sir.

Q. Now, wasn't that due to a particular transaction in the oil trade? A. I don't know what caused it.

Q. Isn't that due to the fact that the Standard Oil Company made some change in its internal policy?

A. I had so heard.

Q. Now Mr. Burrell when was it when you said you made this automobile test?

A. I will admit that this natural gas gasoline is a very fine material, it has helped out the automobile industry; it is very valuable but casinghead gasoline helps the naphtha just as much as the naphtha helps the other. They are invaluable to each other—You cannot say that this material is not high grade (I don't mean it is low grade) It is a very valuable commodity.

Q. Now in what respect is it unrefined?

A. It is not ready for the market.

Q. Now when was it you made this automobile test?

A. It was April 15th.

Q. Of this year?

A. Yes, sir, this year, in fact two trials were made, the first evening just a Packard was used and the next evening both a Packard and Dodge.

Q. What was the atmospheric temperature?

By the Court: Let me suggest you leave that off until you get this other and then you can go on both at once.

By Mr. Payne: That is correct, I had overlooked that. That is all at this time.

By Mr. Swaecker: That's all.

(Witness dismissed)

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By a juror: May it please the court I want to ask the witness a question.

By the Court: No let's wait until he is recalled and you ask him then. He will be recalled.

Whereupon DR. JAMES B. GARNER, a witness called called for and on behalf of the defendant, being duly sworn and examined, testified as follows:

*Direct Examination of Dr. Garner by Mr. Swacker.*

Q. Dr. will you please state your name and address?

A. James B. Garner, Pittsburgh, Pennsylvania.

Q. What is your profession, Doctor?

A. Chemical engineer.

Q. In what particular branch of chemical engineering are you occupied principally?

A. With reference to natural gas gasoline recoveries.

Q. Will you please state your experiences and training in that field and the field of chemistry.

A. I received the Doctor of Philosophy degree from the university of Chicago in April, 1897, and from that time until 1914, I was mostly engaged in the teaching of chemistry and in doing consulting industrial chemical work. From 1914, to the present time I have been connected with the University of Pittsburgh or Mellon *institute*.

Q. What has been your connection there?

A. During 1914 I was on what is known as the Copper Fellowship, that is fellowship that had to do with the recovery of certain *gaseous* from smelters. In December, 1914, in connection with that fellowship I began a study of natural gas and continued that study until September, 1915, when I was appointed Senior Fellow in charge of the natural gas investigation and have since held that fellowship.

Q. Of the Mellon Institute of Industrial Research?

A. Yes, sir.

Q. Had you been engaged in industrial research work previous to that? A. Yes, sir.

Q. While you were teaching and engaging in commercial work? A. Yes, sir.

Q. And you say you graduated as a doctor of philosophy and also of chemistry and physics? A. Yes, sir.

Q. Now in that practice what have you had to do with casinghead gas condensate?

A. I have been required to from the nature of the foundation of the fellowship to study all methods of recovery of liquid products and other by products from natural gas and *there* utilization.

Q. Does that embrace this casinghead gas?

A. Yes, sir, it does.

Q. Has that been the particular subject matter of your inquiry?

A. It has not been the most particular, one of the most particular has been the absorption process of gasoline.

Q. That is *simply* a process—

A. The absorption process.

Q. But the same—same material? A. Same material.

Q. Has your study given you occasion to study *scientific* works on the subject? A. Yes, sir, it has.

Q. What have you done with respect to equipping yourself or familiarizing yourself with the scientific *literature* applicable to the casinghead gas industry?

Q. I have subscribed for all of the most known publications on the subject, I have selected all the publications issued by the United States government and I am a member of two societies which give me *access* to more definite information possibly than the other publications.

Q. What are those societies?

A. The American Chemical society and the Natural Gas Man's Association and the American Society for the advancement of Science.

Q. I will ask you to define the term naphtha as known to the scientific literature dealing with the subject?

A. Naphtha is that liquid distillate derived from crude petroleum, lower in boiling point lower than ordinary kerosine or burning oil.

Q. That is higher in gravity or Baume scale?

A. Yes. And lower specific gravity.

Q. And in that description you are using it in its generic sense embracing all of that portion of crude oil above kerosine?

A. Yes, lighter than kerosene or lower boiling point.

Q. Is that name also used in any other sense than the specific sense?

A. It is used specifically in connection with certain grades of products, marketable products like naphtha A, naphtha B or naphtha C or painters' naphtha or stove naphtha, or solvent naphtha.

Q. Solvent naphtha? A. Yes, sir.

Q. Those are what, refined or unrefined articles?

A. They may be either refined or unrefined.

Q. And are those products subdivisions of the generic product that you have described as that of lower boiling point than kerosene? A. For the most part so.

Q. What is the exception, if any?

A. Solvent naphtha is more particularly derived from coal tar.

Q. As to the others they are all subdivisions of this naphtha fraction that you have described? A. Yes, sir.

Q. Now I would like for you to define the term gasoline in its technical sense proper technical sense?

A. The definition of the word gasoline in the strict technical sense?

Q. Yes? A. That would be the lowest boiling fraction.

Q. You started to say what?

A. Gasoline in the strict sense would be that low boiling portion of naphtha having a gravity from 76 possibly to 82 and usable for the purpose of illumination.

Q. But what further sense is it used in as an article of commerce?

A. That grade of material—I do not understand your question.

Q. You said that it is technically the grade of material which you say would be used for illuminating purposes?

A. Yes, sir.

Q. Now I say define it as known as an article of commerce?

A. My definition would require me to divide it into a number of component parts.

Q. Well do that. What I want to get at is this, if I may shorten it, is gasoline a term applicable to products of petroleum to be used for vaporization purposes? A. It is.

Q. And is it a product of the naphtha fractions of crude oil? A. It is.

Q. As used as a commercial term or article of commerce is it a finished product as distinguished from an unfinished product? A. Entirely so.

Q. You consider anything may be properly called gasoline that could not be used for vaporization purposes, such as running a car or gasoline stove? A. I do not.

Q. Are you familiar with the product that has been testified in relation to here as moving from Kiefer and Jenks and Drumright to Port Arthur? A. I am.

Q. Is that product gasoline in any proper sense of that word? A. It is not.

Q. Will you say whether or not the term unrefined naphtha is an appropriate description of that product?

A. It describes the commodity very accurately.

Q. Doctor did you participate in the test about which Colonel Burrell testified a while ago? A. Yes, sir.

Q. Did you hear his testimony just now?

A. A part of it.

Q. What is the fact as to whether or not the samples would or did run the automobiles upon which they were tested, the Packard and Dodge cars?

A. The raw casinghead and unfinished naphtha would not run the cars.

Q. Did you participate in the distillation tests before and after the material was used? A. Yes, sir.

By Mr. Gann: I thought that was going to be deferred until the test- are made.

By Mr. Swacker: You are entitled to cross examine him but every witness I am going to call now I am going to ask that question of them.

By the Court: Leave that out and I will let you put him back on the stand. You can do that by morning?

By Mr. Swacker: Yes, sir, and I am not asking him to state the tests but if he participated.

Q. Did you participate in the distillation made of the product that was used in the automobile?

A. Yes, sir, I did.

Q. Does that enable you to know that the material was the material which has been described as moving from Jenks, Drumright and Kiefer to Port Arthur?

A. I recognize it as being very similar.

Mr. Swacker: You may cross.

*Cross Examination by Mr. Gann,*

Q. Dr. Garner, you speak of gasoline being used for purposes of illumination. A. Yes, sir.

Q. Isn't that generally known as gas machine gasoline?

A. It is.

Q. And isn't most of the gas machine gasoline sold today casinghead? A. No, sir, I don't think that is so.

Q. Isn't it or not? A. I don't know as to that.

Q. Isn't a large portion of that?

A. I do not know that.

Q. Isn't there another kind of gasoline called export gasoline? A. Probably is.

Q. Do you know the gravity of export gasoline?

A. I do not.

Q. Do you know whether it is made from casinghead or not?

A. I do not know for certain but I believe that it is.

Q. You believe it is? A. Yes, sir.

Q. Then it is gasoline, isn't it?

A. Made from blended materials, yes, sir.

Q. The gasoline to be used in a motor car is not the only kind of gasoline, is it?

A. In the common acceptation of the term, I believe that ninety-six per cent of all the materials used and called gasoline is used in internal combustion engines with suction carburetors.

Q. The term, however, embraces many kinds of gasoline, does it not?

A. Many kinds of gasoline—if you will say specifications of gasoline, say many specifications of gasoline.

Q. They are blended gasolines, aren't they?

A. Practically all of them are blended gasoline.

Q. And cracked gasoline?

A. No cracked gasoline on the market.

Q. Then cracked gasoline is not gasoline?

A. It is not gasoline.

Q. What is it? A. It is unrefined material.

Q. Is it unrefined naphtha?

A. Probably unrefined naphtha, depending upon its characteristic.

Q. Is all refined gasoline unrefined naphtha?

A. It is not, no, sir.

Q. In your definition of gasoline, you say that it is composed of the lowest boiling fractions and the gravity ranges from 76 to 82 degrees?

A. I said that was a strict technical definition of gasoline.

Q. Well, if casinghead gasoline composed of the lowest boiling fractions has a gravity from 76 to 82 degrees, is that also gasoline? A. It is not

Q. Why not? A. They are fundamentally different.

Q. You say it is composed of the naphtha fractions; what are the fractions in casinghead?

A. You take the casinghead you speak of and you distill it and carefully plot your curve—

Q. You are not answering the question.

A. That is a means to the answer. And you carefully plot your curve and then do the same with the material you ask about the curves are entirely different, showing that the amount of the various materials are different. The substances, therefore, are not identical. They are entirely different substances.

Mr. Gann: I ask to have the answer stricken out as not responsive to the question.

Mr. Swacker: That is absolutely responsive.

The Court: I will let the answer stand.

Q. Is it not specifically—is there not specifically names of naphtha fractions, naphtha fractions viewed from a chemical standpoint? A. Varies in amounts of *pentane*, hexane, and heptane and,—

Q. What are the naphtha fractions present in so called straight run refinery gasoline?

A. Probably a trace of *pentane*, relative and the larger amount of hexane, heptane, octane, nonane, and probably a small amount of hydro carbons or the hydro carbons contents.

Q. Is it not a fact that the naphtha fractions,—

The Court: The names indicate certain qualities, do they?

A. No, names indicates in the particular substance the relation, the amount of the hydro carbon or the amount of hydro carbons relative to the amount of the constituency in the substance named, the exact amount of each compound in this material or blend, it has to be ascertained by experiment.

The Court: Go ahead.

Q. Is it not true that the hydro-carbons which you have

just named as being present in the casinghead gasoline and straight run gasoline are the same family?

A. I have not named those of the casinghead gasoline.

Q. What are they you have not named?

A. I answered your question on the gasoline refined for vaporization purposes.

Q. What are they in casinghead?

A. The casinghead is the mixture of the *propane*, butane, *rsobutance*, pentane, hexane, with a little heptane.

Q. Isn't it true in both instances, they are the same series of hydro-carbons of the paraffin series?

A. That does not make any difference.

Q. Well, isn't it true, as I have asked the question, that they both are members of the hydro-carbons of the paraffin series?

A. So is natural gas, but you wouldn't include it as a gasoline.

Q. Do you know how the term gasoline came to be applied to this product of casinghead?

A. I know how the word gasoline arose.

Q. I mean the term as to casinghead? A. I do not.

Q. You don't know it was called gasoline because it resembled gasoline more than anything else?

A. No, I do not know that is the case.

Q. Take for instance, blended gasoline from the refinery. The gasoline itself may have different members of hydro-carbons of the paraffin series?

A. And other series also.

Q. Would gasoline taken from the same plant, from three or four different plants, and blended together, have the identical proportions of these hydro-carbons that you have just named?

A. I don't know; I don't understand your question, sir.

Q. Take refinery gasoline which is blended with the—with a little naphtha, some casinghead, and put on the market as gasoline. A. Yes, sir.

Q. It contains a certain series of hydro-carbons, which are easily identified? A. Yes, sir.

Q. Take another batch from the same refinery, but out of different tanks, perhaps; would you find the same chemical constituents in that mixture as in the first one?

A. I would not know unless I would test it.

Q. Well, what is the general experience?

A. I do not know what the experience is. I know what my personal experience is.

Q. What is your personal experience?

A. My personal experience, they would be the same.

- Q. Identically the same.  
A. Not identically the same, but be used for the same purposes.  
Q. Is casinghead gasoline refined? A. It is unrefined.  
Q. Why do you say that?  
A. Because it is not fit for the use of gasoline.  
Q. Not fit for illuminating purposes?  
A. Uses for which gasoline is used.  
Q. All gasoline or just motor gasoline?  
A. The broad sense of the word gasoline, the word the public understands as gasoline.  
Q. Do you limit the refining to the use to which the article is put?  
A. Refining is always termed by the use of any commodity  
Mr. Gann: That is all.  
The Court: Anything further on re-direct examination?  
Mr. Swacker: I might one or two questions.

*Redirect Examination by Mr. Swacker.*

- Q. Were you in the course of preparation of some curves to demonstrate this fundamental difference between these things at this time? A. Yes, sir.  
Q. Are these the curves that you were preparing?  
A. Yes, sir, these are the curves.  
Q. Can you have those completed by tomorrow?  
A. Yes, sir.

Mr. Swacker: I think we had better save offering them until then. We may offer them tomorrow, after he colors them up.

The Court: Very well.

You may be excused.

Gentlemen of the jury, you will be permitted to separate under the usual instructions and go—we have made pretty good progress today—until tomorrow, at nine-thirty.

Whereupon court took a recess until nine-thirty o'clock a. m. tomorrow morning.

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MORNING SESSION.

April 20, A. D. 1920, 9:30 o'clock A. M.

Whereupon Court having convened at the hour of 9:30, pursuant to adjournment, and the jury having been called and

all found to be present and counsel for the plaintiff and counsel for the defendant announcing to the court they were ready to proceed with the trial of this case, the following further proceedings were had, to-wit:

Mr. Swacker: Last night, through a misunderstanding, the government and our people failed to make connection to get the samples. Now, we are ready to send out, and if they will nominate somebody to go out and bring in a sample. I asked them this morning, but they said at that time they could not get in contact with anybody to go out.

Mr. Gann: We would like to explain the circumstances to the court. Perhaps it would be well to do so not in the presence of the jury.

The Court: Very well, we will do that at noon, when we send the jury out.

Mr. Swacker: May I ask that Colonel Burrell be excused now, or will you need him?

The Court: Mr. Burrell was to be recalled.

Mr. Swacker: Yes, sir.

The Court: And you are excusing him?

Mr. Swacker: Just for an hour.

The Court: Better have some understanding now about the number of expert witnesses you are going to use.

Mr. Swacker: Just have two more,—I mean three more, after Dr. Schock.

The Court: How many have you already used?

Mr. Swacker: Three.

Mr. Payne: No, four.

Mr. Swacker: Three.

Mr. Payne: No, four.

The Court: No, only three: Mr. Tabor, Mr. Burrell and the one from the *Melon* Institute. I will let you use three more, making six. Of course, the other side will be limited to that number.

Whereupon EUGENE PAUL SCHOCK, a witness on behalf of the defendant, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Swacker.*

Q. Dr. Schock, will you please state your full name and place of residence?

A. Eugene Paul Schock; Austin, Texas.

Q. What is your occupation, Doctor?

A. I am a professor and chairman of the School of Chemistry and Chemical Engineering and head of the division for chemistry of the Bureau of Economical Geology, of the University.

Q. What, of the University of Texas?

A. Yes, sir.

Q. What has been your training and experience, Doctor, in the field which you now practice?

A. I received the degree of civil engineering of the University of Texas, the Degree of Master of Arts of the same institution.

Q. When?

A. The first in 1894, the master of arts in 1896, the Degree of Doctor of Philosophy of the University of Chicago, in 1902, Majoring in Chemistry. I have been connected with the University since 1897 and have been there excepting a period of a total of nearly two years during which I was absent on leave.

Q. What is the scope of this particular field you occupy and what specialties do you have if any?

A. The teaching of chemistry, I have charge of its teaching, the teaching of chemical engineering, the chief of which is technology of petroleum.

Q. Why is that?

A. Of all of the chemical industries developed in Texas, Petroleum ranks foremost. In addition to that, as head of the division of chemistry of the bureau of economical geology I am directed to give aid to the industries in the state, chief among which is the Petroleum industry and we not only have a laboratory but we also have a small refinery and work on various crude oils in order to determine the best method of refining on demand from various parties in the state.

Q. Do you practice independently of your teaching in connection with this industry as well?

A. I am permitted to do so to some extent and do so.

Q. And the University itself undertakes to aid along that line? A. It does.

Q. Using your services to that end?

A. Yes, sir, I am in charge of that work.

Q. Are you a member of any technical societies?

A. I am a member of the American Chemical Society and at present a member of the Council of that society. I am a fel-

low of the American Association for the Advancement of Science and a member of the American Electrical Chemical Society.

Q. Does your work require to keep abreast of the current literature, technical literature on this subject?

A. That is one of the prime requirements, because the petroleum industry, in order that one might give aid to people over the State, one must be abreast of the times and naturally senior students who are directly under my charge studying the petroleum industry must be prepared in such a manner as to step right into the industry. So it is required of me to be as prepared up to date as I possibly can be.

Q. To what extent are you familiar with technical literature dealing with this subject?

A. I am conversant with the latest and standard text books and the bulletins, technical papers published in the various journals.

Q. Have you written anything yourself?

A. I published a bulletin recently on the review or analysis of raw materials, particularly rocks and minerals, from Texas sources, I have shown the presence of ozokerite in the shale oil fields which was published in the Journal of Industrial and Engineering Chemistry in 1917, and I have published possibly eighteen or twenty papers of investigation on various phases scientifically pure and applied.

Q. Does your research work embrace the casinghead industry as well?

A. Yes, sir, it does; we expect to do as much for that as possible.

Q. Now, will you define the article of commerce known as gasoline?

A. Gasoline is a material or substance that is not definable in just a few words. We must—in order to define it, we must consider its use, and I take that as my basis for a definition. Gasoline is most used in the ordinary automobile, some is used in gasoline torches, used by plumbers, and so on. Some little is used in gasoline stoves. It is primarily obtained from petroleum.

Q. Before you go into its origin can you indicate by some general quality its character as an article as applied to its use?

By the Court: I would like to ask this question.

By Mr. Swacker: Yes, sir.

By the Court: What was it called before it was used in automobiles?

A. I be—

The Court: What was this article?

A. Now used?

By the Court: What was it called before it was used for that purpose?

A. The material used today under the word gasoline is not identical with the material that was called gasoline years ago because—

By Mr. Swacker: Just a minute—his honor's question is what the material was called previously which is now used in automobiles.

By the Court: If it was used, did it have any name?

A. Collectively, I suppose it would be called—it would come nearer being called naphtha.

By the Court: What was it called then, automobiles have been in use only about twenty years?

A. I want to explain, your honor, that the particular materials you now use was probably not in the market twenty years ago.

By the Court: If it had a name, I want to find out that? You announced the rule?

A. Yes, sir.

By the Court: Automobiles are of recent origin, if gasoline existed practically in the same state now as before, then I want to know if it was called by any other name?

A. There is a gasoline that existed at that time. It was used in gasoline stoves and that was and did not differ exceedingly from the present gasoline, but in another way it does. The quality and the volatility has been steadily lowered in order to meet the greater demand that at one time the time that your honor refers to gasoline it was a product that was not exactly the same, I won't say that twenty years ago gasoline was a different material but it was a gasoline that had a lower boiling point, was more volatile as a whole than the present gasoline.

Q. What was the material which is of the quality now used in automobiles, called, if and when finished, as a finished product before the same was used by automobiles?

A. Before the use of automobiles came in, you mean?

Q. Yes, sir.

A. I think the word naphtha would have been applied to it rather than the word gasoline.

Q. Now, I was asking you of the general quality incident to any of the uses—of the general character of it, character of use of gasoline? A. Gasoline at that time?

Q. No, not at that time; any time, gasoline?

A. Gasoline was always used to be vaporized and served as a fuel. Vaporizing previous to burning being essential to a great extent; that is, it must vaporize at a comparatively low temperature and vaporize wholly.

Q. Vaporization was the means of use of it in whatever use?

A. Yes, sir, for fuel purposes, comparatively low temperature.

Q. You started to define gasoline by its use in the first instance, now I presume you were going on to define it by its characteristics of some other description than use, its origin I think you started on?

A. As I said gasoline cannot be defined in one word. We will say first the origin, consider the origin, gasoline is a material derived from petroleum. It is a liquid volatile, inflammable, but so made up and is a mixture of a number of substances, this material being in such proportion that a part, and a part only, will volatize when air is blown through it, as is done in the automobile, ordinary automobile carburetor. The amount thus changed to strict gaseous form, as distinguished from a mist or rain, the amount that is changed strictly to a gaseous form must be not very large, because upon this depends the explosiveness or starting of explosion of air and vapor mixture limit of the explosibility as far as quantity or amount present as vapor is concerned or a little narrow.

Q. Of what part of petroleum oil is it derived?

A. It is derived from the portion, from the first portion that comes off of the crude product.

Q. What is that known as?

A. The first portions collectively are known as naphtha.

Q. Is that the proper technical name of it? A. Yes, sir.

Q. Now, is there a degree of interchangeability between, of the words gasoline and naphtha?

A. There is, but it is a little one-sided, namely, all gasolines can be called naphtha, but,—well, now, let's see, I don't know that I said exactly what I meant; I mean this, the gasoline is a particular naphtha, the word gasoline designates the naphtha of certain properties, as I understand it.

Q. Whereas the word naphtha means,—

A. The word naphtha designates any volatile, inflammable liquid, hydro-carbon mixtures, which, if we add the prefix in the name naphtha, means and I believe it is derived from petroleum. The same term however is also used in tar industries.

Q. Referring to this industry—is it the fact that naphtha

is a proper name of any gasoline but all naphthas are not necessarily gasoline? A. Yes, sir

Q. Now, are you familiar with the materials—you have been present during this trial? A. Yes, sir.

Q. Are you familiar with the material described as being shipped from Kiefer, Drumright and Jenks to Port Arthur, Texas? A. I am, I have examined it.

Q. State whether or not that is gasoline. A. It is not.

Q. State whether or not it is appropriately described by the term "unrefined naphtha."

A. I consider it appropriately described.

Q. Now, Doctor, did you witness the tests that were described by Colonel Burrell and Dr. Garner?

A. I have reference to two sets of tests.

Q. Both the distillation test and an effort to run a car with it? A. Yes, sir, I was present.

Q. Was your observation the same as Dr. Burrell and Dr. Garner?

Mr. Payne: If the court please, I object to this test, on the ground it was made after the indictment in this case was returned and after the trial had started, and it is incompetent.

Mr. Swacker: We had that subject up yesterday, but I will cover it again.

Mr. Payne: On the general theory that what occurs after the commission of a crime is not evidence in relation to the commission of that crime.

The Court: Have you any authority on tests, and things like that, by experts?

Mr. Swacker: Blood stains are tested months afterwards, and lots of other things.

The Court: I am asking him.

Mr. Payne: I have none at hand.

The Court: I will permit him to testify, then. Your objection is overruled.

Q. Doctor, does your scientific knowledge of this material enable you to say that what was shipped during the period from December, 1916, to March, 1919, is the same material coming from the same wells today? A. Yes, sir.

Q. So that a test made with such material today would indicate the same results as though made with the material actually shipped?

A. Absolutely, the same, yes, sir.

Q. Now, I don't think you answered my last previous question before the objection. That is, whether you observed

the results of those tests, and whether your observation was the same as that testified by Dr. Burrell and Dr. Garner?

A. They were absolutely identical of what was observed by those gentlemen. The car was filled with raw casinghead gas in one case in particular, being careful—

The Court: I will exclude the test as to raw casing-head gas.

Q. Just confine yourself to the blended material.

A. Particular care being taken to empty the storage tank and the carburetor completely, an operation that had to be done rather carefully. Particularly one case the tank was dripping only, but a careful inspection of the tank still showed that it contained some of the original gasoline; so that we used a rubber tube siphon to empty it thoroughly. Then we proceeded to fill the tank with this material, unrefined naphtha, and we found the car could not be started. Then we primed the carburetor, which enabled it to get started; all got into the car, and the car ran smoothly for a distance of 100, 150, possibly 200 yards, and stopped; couldn't be budged.

Q. What did you prime it with?

A. Primed it with some curb gasoline, we found in the car to begin with and we also run the car out on the gasoline and as far as I noticed nothing was done to the car in any way that was unfair and after we found this material would not run the car we emptied the storage tank and we filled the tank with curb gasoline and without touching the carburetor we ran the car smoothly back home.

Q. What make of car was that?

A. Packard on one trial and a Dodge on another.

Q. You spoke of it running a short distance, one hundred or two hundred yards, I will ask you if that priming would carry it that distance itself?

A. Yes, sir, that was the idea.

Q. I say, did the engine even run, to say nothing of the car? A. The engine did not run.

Q. Dr. I will ask you if the State of Texas has a statute covering the qualifications of the material that may be called gasoline? A. It has.

Q. I will ask you to look at this and see if you can identify it as being such statute?

Mr. Gann: I object.

The Court: On what theory,—they had one in Oklahoma that was in force about ten or fifteen years passed by the old territory law, they say in it—what constitutes gasoline,—

Mr. Swacker: Don't say that constitutes gasoline, that is not the theory, what it does say is with reference to declarations as to safety and prohibiting it to be sold for domestic purposes and the last amendment last year the Corporation Commission was empowered to formulate further regulations of safety we intend to offer the proof as to that,—

The Court: On what theory is this admissible?

Mr. Swacker: In it this statute goes much farther than the Oklahoma statute and making it absolutely prohibitive to call this gasoline either by the dealer or the carrier and defines the only material—

The Court: Yes, but the state law would not be applicable to interstate commerce.

Mr. Swacker: It is by the terms applicable and I think under all the circumstances might be valid as a police power act, but I am not urging its legality as to that but as the evidentiary effect that this is not gasoline.

Mr. Diggs: We think if the court please, it is admissible on two other theories; this stuff is shown to be sold in Texas by the Texas company who is familiar with the terms of its name, consequently with the use, it was to be put to we think, it is admissible on another theory, the same theory that your honor let the statements of the employees in at the plant, that they called this particular article gasoline. Now, I say that is admissible to show what people generally, think of it in Texas.

The Court: When was that law passed?

Mr. Swacker: At this recent legislature.

The Court: That has been since these rates were made?

Mr. Swacker: Of course since the rates were made, yes, sir.

The Court: Let me see that.

The Court: I will hear from the other side.

By Mr. Gann: May it please the court, this would cover a large field if this class of testimony were permitted and it would require the government to go over the continent to show that gasoline in one state was such and such and gasoline in another state would be such and such specifications. Our position is, what is gasoline in Alaska may not be gasoline in South Carolina. We—this was for the purpose of sale in a state; for a certain purpose. We

don't think that it is the test, whether this is or is not gasoline.

Mr. Diggs: Your honor, do you care to hear from us?

By the Court: I am inclined to think it is not competent, but—

Mr. Diggs: We outlined certain things to your honor the other day.

The Court: This act was approved on March 24th, 1919.

Mr. Diggs: Yes, sir.

By the Court: And would become effective 90 days after date, April, May, June, so it wouldn't become effective until after the last day in this indictment.

Mr. Diggs: Yes, sir.

The Court: I think that would absolutely eliminate it.

Mr. Green: Pardon me for a suggestion. It is our position that this statute is simply the crystallization—

The Court: No, but it is within the power of a concern to go and have a law passed to make it a measure of evidence in the trial of a case.

Mr. Green: If there is anything like that in this case, that would be a different proposition.

The Court: But you look at the possibility; that is the rule. I am not assuming that incident and I do not mean for the jury to think there is any imputation, to think any such thing has been done in this case. But you look at the possibilities. Just like the other morning when evidence was offered, when I can fix a rule by which I can see absolute safety, I was going to let it in if it came within the absolute rule—I will hear you.

Mr. Green: I just wanted to make this suggestion to the court, and that is this: it is our position that the statute there shows for itself that the standard being used here by the government itself is being adopted in the State of Texas following the government's lead, it says that this is gasoline. This defendant is a resident of the State of Texas and must take notice of its laws, and this being a criminal case, that is one of those circumstances that we feel should be allowed to go to the jury, not that this law is absolutely binding, but before the matter could be enacted into a statute, that line of thought must have crystallized to an extent as shown by the Bureau of Mines and

later certainly did appeal forcibly to the authorities for the State of Texas and they put it in statutory form. And while this is prior to the date alleged in the indictment—

The Court: You mean subsequent?

Mr. Green: I say subsequent, but it is prior to the return of the indictment, and it occurs to me that it might not be without any imputation on our part, that it is not altogether right to deprive the defendant by stopping the date of the offense many months before the indictment is returned; in other words, this indictment is returned in November and the last offense alleged is either in March or in May. Now, that would absolutely deprive us of facts that ought to go to the jury.

The Court: I don't think this evidence is competent.

Mr. Diggs: Before your honor rules, we would like to state our purpose. We think the only possible ground on which to determine is by the general custom controlling the whole country. What is the custom of the country can be proven by its laws and usages, for instance the very authority handed by the gentlemen to your honor applies to a locality and did not extend to the whole country. When you look at it and determine all the circumstances—the United States Supreme Court has held that you can look to the different laws of all the states in the Union for the purpose of determining the general view of the government, namely, the expression of the will of the people and the proper exercise of that view to know the police powers. If we can look to the general laws which represent, at least are supposed to represent the will of the majority of the people, as to what the very views of the government is, we can look to it for the purpose of determining the nature of an article. If a person who testifies that he doesn't know enough about the article about which he testifies is a certain thing to give a single element of which it is composed, if that be evidence to go to the jury, it must be that a body representing a state that sets out their knowledge of the matter by setting out its constituent elements is entitled to weight.

Mr. Diggs: We think it is also evidence in rebuttal, showing the custom of what is and what is not gasoline if evidence as to the custom of calling a certain thing gasoline is to stay before the jury. We think in addition to that, the point made by the government here now is correct, that they can call—can go for the purpose, if you can determine the nautre of this article by representations,

what any state has declared gasoline is not only competent, but very important evidence in the case.

The Court: Have you any authorities? I would like to see them.

Mr. Diggs: The only authorities that could be said are directly in point, I am taking the one case from Noble County State Bank in this state, in which case the court held that they could take judicial knowledge of what the law of the states are in reference to the bank guarantee purchase of it, and properly and justly exercise police powers. If we can look to the habits and the customs of the people for the purpose you have described, you can look to determine what the article is they use.

In the same volume presented to your honor in the case the other day, if you will look at the general expression of merchants to determine what things described a certain thing enacted by Congress to be a toy, if in fact it is not a toy, the article of commerce in common use and therefore should pay tariffs at a different rate than that named in the act itself, we can certainly look to the Act to determine what a certain article is considered to be in common use. It is the same. I have no specific case in mind on this exact point I am now making, but there can be no difference in the principle if there is an application only.

The Court: Yes, it says for the purpose of this Act, the word gasoline where used alone or connected with other words is applicable only to the petroleum product defined that the following minimum required,—that means by—

Mr. Diggs: If the official act of a man like Colonel Burrell, who would write a book, would be considered evidence of proper designation of a certain thing, certainly what the legislature thinks, and enacted into the law of a state carries, if not scientific knowledge, as equal general knowledge of what is considered to be the general use.

The Court: I will allow you to prove the rules of the Bureau of Mines, I permitted that to go to the jury. I have serious doubts about this. I will not permit it now. I will not rule on it now.

Mr. Green: In order to keep the record straight, we will preserve our exception.

Mr. Diggs: He says he is not ruling on it now.

Mr. Green: Alright.

Mr. Swacker: Your honor used the words, "for the purpose of this Act," I would like to call your attention to the preceding Act embracing all sales and transportation.

Mr. Payne: I object.

Mr. Swacker: Just a moment. He may handle what material in the State of Texas.

The Court: I will consider it and rule on it later.

Q. Did you state a part of your work embraced the art of refining itself, aside from the chemical aspects of the industry?

A. Yes, sir.

Q. You say you maintain and operate a miniature refinery for treating and demonstration purposes? A. Yes, sir.

Q. Will you say whether blending is a part of the art of refining, and if so, what part it is?

A. Blending is an essential operation in the production of at least two and probably more commodities obtained from a refinery, and in the operation and in the production of lubricating oils, nearly all refineries produce a few stock oils to begin on, and then blend these in various proportions, in order to meet the demands of the public for certain grades. In the same sense, I should add that the refinery is asked for a particular product, he seeks not only to blend it to meet the customers brand, but to dispose of all of his product so it is natural—

Mr. Gann: I object. He asked him about lubricating oil, which is not a test and not a part of this case.

The Court: I don't see it is competent.

Mr. Swacker: The only thing, I asked him what part blending played in the art of refining. He says it is not only a part but an indispensable part of the refining.

The Court: I am not going to permit the evidence, only so far as it relates to the gasoline.

Mr. Swacker: All right.

A. Blending is an essential operation in the gasoline today because certain refineries run gasoline—in an up to date refinery that is not only one of the materials that it has to dispose of. We deal in most refineries with what we call still gases, namely, gases that are not condensed during the distillation produced, not condensed in the water containers, and is to be condensed by compression and most excessive cooling. The product thus obtained is treated in various ways, and, of course, today there are two sources, namely, casinghead gas and cracked material, so called. All of these have to be dis-

posed of in such a way that the material on hand may not be used up, but particularly to produce material suitable for the public. Now, the proportions of the volatile, to the less volatile in the gasoline is a very important and a very intricate matter. You take—about the only way to get at it is to guess what to do, what you have on hand, and make the mixture and then take an examination of the mixture and make a distillation and such other tests as may be necessary to see if it meets the demand, and to see if it will fill the requirements of the gasoline and the other constituents named in certain amounts. I was favorably impressed with this in my school when I put this problem to the students and gave them that—

Mr. Gann: I object.

The Court: Yes.

Mr. Swacker: I think that is not competent, your honor.

Q. Doctor, will you please state whether the term unrefined naphtha is not a comprehensive term merely limited to this material that was shipped to Jenks, Keifer and Drumright from Port Arthur?

A. Why, it is more of a comprehensive term, it would not designate this material only.

Q. Would it embrace such material as a topping plant produces? A. I would say so.

Q. Would it embrace what is known as light end distillate? A. Yes, sir.

Q. Doctor, have you any interest in this controversy? A. No, sir, none at all.

Q. Are you interested in the Gulf Refining Company, at all? A. Not in any manner.

Mr. Swacker: That is all.

*Cross Examination of the Witness by Mr. Payne.*

Q. Referring to the automobile test, that you made, did you see the sample that you used, extracted from the tank in the casinghead gasoline plant? A. No, sir.

Q. Who gave you the samples?

A. The samples, as near as I can locate who gave them to me, were given to me by Mr. Sanderson.

Q. Did you make any chemical analysis of the sample before you put it into the car?

A. Chemical analysis so called, made a physical examination, but not what you would call a chemical analysis.

Q. Do you know what that sample was? A. Yes, sir.

Q. How do you know unless you made a chemical analysis of it?

A. I said I did not make a chemical analysis as you would call it, we determined the physical properties of it though.

Q. What analysis did you make?

A. Determining the vapor tension, the gravity and distillation curve with great care.

Q. Doctor, you don't call that a chemical analysis, do you?

A. We call that a set of tests sufficient to identify the material.

Q. Now, you don't call that a chemical analysis, do you?

A. I said we call it taking the physical test, I examined that, that is what is meant by chemical.

Q. That is a mere physical examination. You don't call that a chemical examination, do you? Categorically?

A. There are many people call it that. It is usually done by chemists—

Q. Answer my question, do you call that a chemical examination?

A. I have many times. When I am more *accurately* stating, I call it physical test.

Q. Now, isn't it a fact that your gravity and distillation tests would not determine the true material of the fluid?

A. The gravity and distillation tests—

Q. Yes?

A. Would not determine the true nature of the fluid in all senses.

Q. As to what it actually was?

A. As to whether it was derived from petroleum.

Q. No, as to what it is?

A. I would certainly say they could with such incidental observations. A man doing the work actually gets, such as to the odor and so forth, to an experienced man, it absolutely identifies the material.

Q. Now isn't it possible that the sample that you attempted to use was not at all the sample from the Gypsy plant, so far as you know?

A. That is correct. That could be the case because the nature of a material is as to the physical or chemical purposes—might be derived from a large number of sources.

Q. In other words, all you know is you were given a sample of something and you put it into a car and tried to run it and it wouldn't run?

A. And in addition to that I examined it.

Q. You examined it physically?

A. Physically or chemically analysis in the ordinary sense of the word.

Q. Now, what would be the test of a gasoline that would run a car?

A. What would be the test of a gasoline that would run a car?

Q. That is my question, sir.

A. First of all the running of the car would be the test, the direct experiment.

Q. Alright, go ahead?

A. Now, from experiment and comparing that to the distillation curve we get a comparison, get a relation from which we can judge, not very closely now, I wouldn't attempt to say very closely, but what will run a car and what won't but, when there are wide differences you can tell from a distillation curve and the gravity—

Q. State what—

Mr. Swacker: Let him finish the answer.

Q. State what those tests were.

A. Just the distillation and the gravity.

Q. What gravity or initial point, what end point will run the automobile?

A. If we have a material that will begin to distill at low, at least 140 degrees Fahrenheit, that will distill twenty per cent. at least, at 221 that will distill 45 per cent.; at 275, that will distill at least ninety per cent at 356, and dry point not exceeding 428 and the minimum recovery as we call it of 95 per cent., such a material will run a car.

Q. Now, must it have the initial point as high as 140?

A. That is the upper limit; it must at least begin to distill at that temperature. It will begin to distill lower.

Q. So if you had the initial boiling point as low as 100, that would be all right? A. Yes, sir.

Q. Ninety?

A. Taken by itself that would not mean very much, but I will pass that.

Q. Eighty?

A. You are now getting in the region where it becomes to be dubious.

Q. Seventy?

A. That itself will not decide the question. Suppose it has, it drops—it begins to drop over a little at seventy, beginning to distill, and get 95 per cent. recovery, then the material will run the car.

Q. Now, has the recovery,—does it have anything to do with the propelling power of the gasoline?

A. The recovery is one of the most essential indications of the mixture.

Q. You mean the gasoline that would not have a recovery of 95 per cent, would not run an automobile?

A. I will not say that, because, as I said, to begin with there are wide differences only a man with experience can distinguish between.

Q. Is not the recovery test more one of economy than anything else? A. No, sir.

Q. Is it not a fact that in some specifications they require a certain minimum recovery, so that otherwise the gasoline would not be economical because of its rapid evaporation?

A. I don't take it so.

Q. Has that anything to do with the propelling power?

A. Indicates the per cent. of very low boiling and hence more condensable and hence more loss of material in the distillation, and that is very essential.

Q. Going back to this automobile test, did you examine the fluid for water contents? A. Yes, sir.

Q. Is it not a fact that a little part of water put in the gasoline will prevent the car from running?

A. That would depend entirely whether—where the drop of water gets.

Q. What?

A. That would depend entirely where it happens to be located. A drop or two of water in the carburetor might do a great deal of damage. I have not tried that particularly, but I have had a drop of it—got a little water in the carburetor once or twice.

Q. I don't believe you answered the question; would the presence of water in gasoline prevent it from running a car?

A. How much water?

The Court: Any water put in the gasoline prevent it from running the car.

A. Enough water would; water in drop form might in the carburetor. It would, naturally, interfere with the running of the car.

*By Mr. Payne.*

Q. Did you make an examination of the gasoline to find out if it had water in it?

A. Physically free from water.

Q. Did you make the test?

A. Yes, sir, we observed the gasoline very carefully.

Q. Were you looking for water?

A. We looked to see the gasoline was pure so far as the water was concerned.

The Court: How did you make the test for water?

A. You asked—I asked for the quantity, and I was not told how much—

The Court: How did you make the test?

A. To test—one of course, is the fact that the sediment in water will settle and actually dissolve water, will not interfere with the running of the car, and if you want to determine that, that is a very difficult matter to determine, and that would have to be done by having a chemical reaction in the gasoline. It could be determined on the other oils or heavier oils than gasoline with comparative ease; more so than gasoline. To determine that in the heavier oils you put it in the steam still and the lighter oils are carried off and the water with it; but in such light oils as gasoline it can not be done that way, and is not ordinarily done that way.

*By Mr. Payne.*

Q. What would you say was the boiling point of the alleged gasoline attempted to be used?

A. The initial boiling point?

Q. Yes, sir. A. At least 140, must begin to boil—

Q. That you attempted to use on this test?

A. On this test?

Q. Yes?

A. I would have to refresh my memory. This started to distill at 85.

Q. And what was the gravity?

A. The gravity was 73.3 degrees Baume' at 60 degrees.

Q. Now, Doctor, if a product has a low boiling point and a 76 gravity, or 73, what did you say?

A. This was 73.3.

Q. A gravity of 73.3, why will it not explode and run a car?

A. In the first place, that is all the data you can give me on it?

Q. Is that all you have? A. No, sir, I have the end point.

Q. What was the end point? A. The end point was 400.

Q. Now, has the end point got anything to do with starting a car?

A. Nothing to do with starting the car.

Q. Now, answer my question. I gave you the boiling point; I stated a low boiling point and about the gravity?

A. And the recovery.

Q. No. A. I must have the recovery.

Q. Can't you state where a product is of a low boiling point and a 76 gravity, can't you state whether it will explode and start a car, and if not, why not? A. Because—

Q. Answer yes or no, first.

A. I can't tell from that whether it will start it or not.

I can conceive distillation with just that data that will drive a car.

Q. Now, why wouldn't the alleged gasoline that you attempted to use in that test run the car?

A. Because the amount of material that distills at low temperature and at distillation even below this temperature is never condensed, is judged by the first drop that is found, but when you distill at lower boiling, the material is not condensed at all. You can see clouds of it pouring out of the condensor tube. That distillation is indicated by the loss, the recovery being less than 95 per cent., or whatever the recovery is, the amount that is short.

Mr. Payne: That is all.

*Further Direct Examination by Mr. Swacker.*

Q. Doctor, if there were water present in the gasoline you used in the test, to such an extent as would prevent the operation of the car, would that be indubitably in evidence in the distillation test that you made? A. It would.

Q. So that you can say positively there was not water present in it in that way from the distillation test that you made? A. Yes, sir.

Q. Now, if there had been water in the carburetor, would it not have interfered with the car running on the refinery gasoline as well?

A. Yes, sir; besides that we drained the carburetor.

Q. But if the failure to run was due to water in the carburetor, it could not have run on the curb gasoline, either?

A. No, sir.

Q. Now, you were asked, was not allowed to complete your answer with relation to curves, will you explain why it is necessary for you to know what is the curve of the gasoline before you can tell whether it will run a car?

A. Because the gasoline that will run a car, must be made up of a mixture of continuous or a mixture of substance which will give a rather continuous curve, as we call it, extending from the lowest to the highest in order that this mixture, when it is sucked or drawn up with the air, drawn through a carburetor, may partly change to a gas, and the remainder be drawn along, a fine mist, as if we used the mixture of lubricating oils and casinghead gasoline, we could have any gravity we wish, and as we drew, use it in the car, particularly with, what we might call wild gas product, as we drew air through there we would get a vapor only, and a very little mist because the lubricating oil would be too heavy to be drawn along, the vapor would be too rich, could be easily too rich because the per cent

of vapor and air, the upper limit within which no explosion will occur is very low, and if that per cent. is easily exceeded, on the other hand the lubricating oils, it would be drawn along—

Mr. Payne: I object.

The Court: Yes, I think that is.

Mr. Swacker: He is speaking of the curves on gasoline composed of the lubricating oils, just to demonstrate that it can be seen by some of the curves that it is impossible to run a car—

The Court: I don't understand lubricating oils to be in this case.

Mr. Swacker: No. He is demonstrating why it is impossible to run a car on certain curves in certain instances.

The Witness: Your honor, will you allow me to explain?

The Court: No, I think that is going too far.

A. Well—

*By Mr. Swacker.*

Q. Now, then—

Mr. Diggs: Please note our exception.

*By Mr. Swacker.*

Q. So far as identifying this material as that described as having been shipped to Port Arthur, would a technical analysis enable you to one bit better determine or compare it with any such description of the commodity you have shipped to Port Arthur and this article about which evidence has been given? A. It would not.

Q. Isn't it a fact the material is composed of petroleum, hydro carbons?

A. The relation of the gravity to the boiling point indicates that all right, and allows one to draw the conclusion.

Q. Now, would it be of any use to know the chemical properties in determining this you have heard in evidence, to identify this, after the evidence you have heard?

A. It would not be necessary.

Q. Would it be of any use? A. I can see no use.

Q. That is all.

The Court: That is all.

(Witness dismissed.)

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The Court: Call your next witness.

Mr. Swacker: Call Mr. Miller.

And thereupon WALTER MILLER, a witness called for and on behalf of the defendant, having been first duly sworn, upon oath according to law, took the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Swacker.*

Q. Please state your name and residence, Mr. Miller.

A. Walter Miller. Tulsa.

Q. What is your occupation, Mr. Miller?

A. Petroleum refiner and consulting engineer.

Q. With reference to petroleum?

A. With reference to petroleum refining.

Q. Will you state your experience as a refiner in the re-finishing business?

A. I entered the employ of the Tide Water Oil Company in their refinery at Bayonne in 1909 as process or yield clerk, having charge of the accounting work in connection with the determination of yields and to ascertain costs in the processes of the refinery. At the end of six months I was relieved from detail work and made a special investigator for the superintendent of the paraffine and lubricating department. At the end of another year I was made chief clerk but continuing in addition with that the duties of all special investigation and being connected with experimental and research work. I held that position for about two years and a half and was then made assistant superintendent, or assistant to the general superintendent of the factory with the direct responsibility of operating the paraffine and operating department. Sometime after that, my duties were extended to include the gasoline and kerosene department; and when I left the Tide Water Oil Company, in March, 1917, I was a member of the manufacturing committee, chairman of the investigation and research committee, chairman of the processing committee, assistant to the general superintendent in charge of all processing work in the refinery, in addition to being connected with the sales department of the business also. In March, 1917, I came to Tulsa and took the position of general superintendent of the United States Refineries of the Pierce Oil Corporation, with refineries at Sand Springs, Oklahoma, Ft. Worth, Texas, and Texas City, Texas. I was with the Pierce Oil Corporation for six months and then took a position as manager of the manufacturing department and in complete charge of all the refining operations of the Cosden and Company on September

the 1st, 1917. That position I held until November the 1st, 1919, when I opened an office myself and went into the consulting business as a refiner, consulting engineer with special emphasis on operation and management. I am still connected with the Cosden and Company in consulting capacity and also have other clients with whom I am consulting regularly as well as clients for whom I make special reports.

Q. In the course of your employment and experience, have you had occasion to study technical works on the subject of petroleum refining?

A. I have, both in connection, with chemistry as directly applied to refining and with engineering, mechanical and civil engineering, directly applied to refining and the technology of the petroleum refining generally and in addition the consulting work of refining, I have had many opportunities to visit the plants and meet other refiners and compare our operations with theirs and discuss evolution of the business and improved methods in the business from time to time.

Q. And what technical societies are you a member of?

A. I am a member of the American Mechanical Society, American Institute of Mining and Metallurgical Engineering, American Petroleum Institute, Mid-Continent Oil and Gas Association, American Electro Chemical Society. I get publications of all those societies and attend meetings whenever opportunities offer.

Q. Have you had any special studies with regards to the nomenclature of the business besides the processes?

A. I have been in charge with the duties in considerable of my employment of deciding what names ought to be applied to the different products and what the rule was to be for applying the names to new products or new divisions of old products in the different refining companies I have been employed.

Q. That would be the Tide Water, the Pierce and Cosden?

A. Yes, sir.

Q. Did you have anything to do with any publication by the Tide Water Company?

A. I assisted Mr. D. W. Strafford in compiling the refining and test material in the booklet which they put out advertising the lubricating oil, Veedol, in which they went quite fully and extensively in a popular way into a brief description of the refining and tests of the various products or refining as well as giving illustrations of the methods of processes.

Q. Have you in the course of the experience you have related had occasion to deal with the commodity known as casinghead gasoline? A. I have.

Q. Where and when have you handled that?

A. Strictly casinghead gasoline, I first handled in a large

way in the refineries of the Pierce Oil Corporation at Sand Springs from March to August inclusive, 1917.

Q. And where further?

A. In my capacity as manager of the refining department for Cosden and Company, I have handled millions of gallons of casinghead products which were shipped to the Cosden Refinery from compression plants in the producing fields. In addition to that my experience has included over a longer term the light gasoline, compression plant gasoline, made at the refinery from still gas. At the Tide Water plant several years before I left, we built and operated a large compression gasoline plant which compressed recovery from refinery gases and extracted therefrom the gasoline which was available and which is to a certain extent analogous with the casinghead gas. The same thing is true of my experience at the Cosden Refinery. During my term with the Cosden Refinery we built a large plant of these compression pipes for handling the still gas which will handle from two hundred to four hundred barrels of gasoline per day.

Q. Now, is that plant practically the same as casinghead plants in the field?

A. The same thing as the casinghead plant in the field for similar purposes, with a few modifications to the certain character of the gasoline.

Q. Is the product of that plant finished gasoline or not?

A. It is not.

Mr. Payne: We object to that line of testimony.

The Court: On what ground?

Mr. Payne: The defense is trying to show the facts are different from those testified in evidence, by an expert witness.

The Court: In what respect?

Mr. Payne: You have various still gases called gasoline and are identical in every respect.

Mr. Swacker: He says they are substantially identical.

The Court: You can ask him the hypothetical question.

Mr. Swacker: I didn't ask him the question. He stated the fact.

Q. What did you say with reference to the analogy of the still gas gasoline and casinghead gasoline?

A. I should say that the properties of the individual hydro carbons such as mentioned by Colonel Burrell protein,

*mythane*, ethane, and so forth, were somewhat different, and they—technically speaking, the products were a little more sediment than the gases obtained from casinghead gas, but substantially and essentially, they are similar, in that there is not enough difference in the range of boiling point to make a difference in the handling.

Q. They both come from the same source, petroleum oil?

A. That is my opinion.

Q. They are both destined to the same use? A. Yes, sir.

Q. What is that use?

A. To be blended and worked off with refinery gasoline for use in motors generally.

Q. This still gas gasoline—is still gas gasoline a finished product?

A. It is not. It must be blended or weathered or redistilled in some manner and in the same manner that casinghead gas is handled.

Q. Are you familiar with the material testified to here as having been shipped from Keifer, Drumright and Jenks to Port Arthur? A. I am.

Q. State whether or not that material is gasoline.

A. I don't so consider it. It is not suitable for gasoline.

Q. How do you define gasoline?

A. Gasoline I define as being generally that fraction of crude petroleum or similar products lying within the range of boiling point and other necessary physical tests which will satisfactorily and economically operate an internal combustion motor.

Q. Well, will this material do this?

A. This material will not do that.

Q. State whether or not it is necessary to apply any process to this material in order to make it usable in an internal combustion engine, as you have described? A. It is.

Q. Where is that generally done in the business?

A. At the refinery.

Q. And how is it generally done?

A. By mixtures, blending it with a product of the crude oil in such a manner and such proportions as to bring the material to the point where it will operate an internal combustion motor satisfactorily and economically.

Q. That is within such range of boiling point and other physical characteristics as will do that? A. Yes, sir.

Q. Is that the only method of bringing it to the point of a finished product?

A. That is the most economical method. It can be brought to a point, can be brought to a stage of operation of the internal combustion, by excessive weathering, or distill it, and also

at times such gasoline is off color, when it is handled by acids to restore the color, or by distillation or filtration through Fuller's earth.

Q. In case it is so treated, as you have last described, is it, or not, necessary even then to blend it thereafter?

A. In the case of treating it with sulphuric acid or filtration through Fuller's earth, it is necessary to resort to the blending process the same, as otherwise in the case of distillation, possibly 25 or 40 per cent residue may be obtained which can be used without blending, although in a good distillation process there will be the first material lost, encountered, not incondensable gas and a comparatively small recovery less obtained as a distillate which will be of sufficient character that it will also have to be blended before it can be used in an internal combustion motor.

Q. Now, you said that by excessive weathering the material was brought to a condition where it would be usable. To what extent would it be necessary so to weather it, to make it reasonably usable material?

A. I believe it would be necessary to weather it where the point of residue or remainder would be from 25 to 40 per cent of the original product, the balance having been lost as a gas.

Q. Now, what is the approved practice in refineries generally, as to the percentage of casinghead that may be blended off in a mixture with other materials?

A. That varies to some extent. At the Pierce Oil plant, we followed the practice of keeping the percentage of casinghead down to three to five per cent of the total mixture. In my experience in the Cosden refinery—

Mr. Payne: Your honor, I object to this, unless the question is limited to the refineries with which he has been connected.

Mr. Swacker: That is what he is stating. He has just finished with the Pierce Company and is now starting with the Cosden.

The Court: Very well.

A. At the Cosden Refinery we received the product in blended form and so worked it off with the straight run gasoline that the proportion of raw gasoline, equivalent gasoline, was not over three to five per cent. This was done both to meet specifications of recovery, to insure greater safety in shipment of the product, to insure that the gasoline so turned out had a proper range of boiling point and intermediate curves, curve points as they are commonly known, and also to avoid excessive outage losses in our shipments.

Q. By outage losses, you mean waste by evaporation in transit? A. Yes, sir.

Q. And in the course of handling from one conveyance or container to another? A. Yes, sir.

Q. Now, have you had an opportunity and occasion to observe the practice in that respect with other refineries, or from the literature are you able to say that is regarded as the generally approved manner of handling it?

A. I am able to say, from observation, and comparing notes with others, that the practice may vary, but few, if any, go above ten per cent of mixture.

Q. You said casinghead gas content; what did you mean by that?

A. I mean by that the quantity of actual low casinghead products which enter into the final mixture which is shipped to the customer; that is to say, only three to five per cent casinghead out of each one hundred gallons—only three to five gallons in the material that comes from the casinghead source.

Q. Excluding such blending material as may have accompanied the casinghead gas itself, is that correct?

A. Yes, sir.

Q. Will you define the word naphtha as used in the refining business?

A. The word naphtha is used in the refining business generally as the generic term on that fraction obtained by the distillation of the crude oil before the product kerosene is reached. It is also used more specifically to cover the heavier blending materials which are used in connection with the compression plants in some parts of the country.

Q. Is the name extended by the individual manufacturer even further than that? A. It is.

Q. What was the practice, for example, by the Tidewater Oil Company?

A. The Tidewater Oil Company even was calling it naphtha from the beginning of the process to the finish and the shipping of the finished product. We said crude naphtha, prime city naphtha, gas naphtha, these same terms with various qualifications indicating some part of the process, in addition to which the finished product was sold perhaps at a sixty gravity naphtha, 63 gravity naphtha and 72 gravity naphtha, and so on.

Q. The material ordinarily sold and called gasoline, by them is still sold and called naphtha?

A. It was so called by them when I left their employment, and, to the best of my knowledge and belief, it is now.

Q. That is a very old refining concern, is it not?

A. Yes, sir.

Q. Do you know whether or not that is the use extending back very many years with them?

A. It is used with them extending back I think through the entire history of that plant. I will say yes, it was their practice there all the time that I was connected with the plant.

Q. Say whether or not this blending process that you have described is a process of refining?

A. I consider it so.

Q. Will you say whether or not this material shipped from Jenks, Kiefer, and Drumright to Port Arthur is properly designated by the name unrefined naphtha?

A. I consider it a proper designation, the name of unrefined naphtha, I might personally want to call it something else, to be a little more descriptive.

Q. What would you call it?

A. As unfinished naphtha or unfinished gasoline blend or unfinished casinghead blend or unrefined casinghead blend.

Q. Will the term unrefined naphtha embrace anything more than this properly?

A. Yes, sir, unrefined naphtha will embrace any naphtha product which has not been completely refined, ready for use.

Q. Will it then embrace the material referred to as tops?

A. It will.

Q. And will it also embrace the material I referred to as light end distillate?

A. It will, as all of that light end distillate comes within the boiling point range from naphtha, as I understand.

Q. Will it in such cases be a more appropriate technical correct designation of those materials than the name top and light end distillate?

A. I think so.

Mr. Swacker: You may cross examine.

Mr. Swacker: Just one more question.

Q. State, will you please, Mr. Miller, whether it would be possible in this day and age for a refinery engaged in the production of gasoline to operate successfully without resorting to blending as a part of its process?

A. Not a refinery which attempted to make gasoline to meet specifications.

Q. State whether or not there is great confusion and misuse of names within refineries of products?

A. There is. Each superintendent of refineries and a good many refinery employees have different ideas about the nomenclature which should be applied to them depending on where they got their early experience and education in the business.

Q. Is it or not an incident of such confusion that the use

of the names of finished products are applied to the materials ultimately to become such products?

A. Such is the case, although usually when that is used it is qualified with an adjective which is perhaps more descriptive than the name alone would be.

Mr. Swacker: That is all.

*Cross Examination of Mr. Miller by Mr. Gann.*

Q. Mr. Miller, I understood you to say you are now doing a consulting work? A. Yes, sir.

Q. Have you any interest pecuniary or otherwise, any investment in the Gulf Refining Company? A. I have not.

Q. In the Gulf Pipe Line Company?

A. I have not. I have not done any work for the Gulf Pipe Line Company, or the Gulf Refining Company, or any subsidiary.

Q. Have you any connection with the Mellon Institute at Pittsburgh? A. I have not.

Q. What is the Mellon Institute?

A. I know it is a scientific school in Pittsburgh. I have not visited it or have not been in it and I know a number of the graduates and the faculty.

Q. You state you are a member of the Mid-Continent Oil and Gas association? A. Yes, sir.

Q. Is that a local association?

A. It takes in Oklahoma and Texas and Kansas districts very largely.

Q. Has that association a casinghead gasoline committee?

A. Of that I am not sure.

Q. You are not a member of such committee?

A. No, sir, not a member of such committee.

Q. I notice in your testimony you constantly used the term processing, as being the same as refining, do you do that of your own initiative or make a distinction?

A. No, no, that is my term for the different operations going on under the refining of the oil and crude and the other processes.

Q. Are not three processes usually known in the refining of the crude, the crude still, steam still, and the agitator?

A. Those three, those three distilling processes for the operation which are usually known under the generic term— together with many other operations.

Q. And when refining, general refining, referring to the article being refined, don't you limit it to the three terms?

A. No, sir.

Q. You don't think so? A. No, sir.

Q. The subject of blending I believe you said it was in mixing? A. Blending?

Q. Yes, sir? A. Yes, sir, the words have a similar meaning, compound would be another word.

Q. I understand compound means something else as applied to the oil industry, so we will not go into the compounding. Is it not a fact, several years in the Oklahoma fields the mixing and blending was done right in the casinghead plant and the product sold commercially as gasoline?

A. Of that I can't testify as an expert, because I was not in the fields here in those years.

Q. Well, you have shown knowledge of conditions in the field, isn't that a fact of which you would naturally have knowledge?

A. It is a fact I gained knowledge during this trial.

Q. You didn't have it before?

A. I have talked with men before who have tried to blend in the field and have found it unsatisfactory to blend at their plant and attempt to sell that as a finished product.

Q. And it was done?

A. It was attempted, but it was not satisfactorily done, to my understanding and belief.

Q. The point I make is the casinghead products were blended in the Oklahoma field, and were marketed commercially?

A. I can't definitely testify as to that.

Q. Now, this mixing or blending, as it is done in the casinghead field, isn't that the same kind of blending and mixing that is done at the refinery?

A. It is a much simpler operation than is done in the refinery.

Q. Simpler in its operation or its results or its effect?

A. Simpler in its results, because blending is done in the coils and becomes more complicated than in the casinghead plant, but in blending in casinghead plants, the object kept in mind there is merely to reduce the vapor tension to a shipable degree. In blending in a refinery, the object is to reduce not only the vapor tension, but reduces other undesirable characteristics to such an extent as to make a product for use in automobile motors.

Q. In your definition of gasoline, Mr. Miller, you state that a substance which would be satisfactory and economical to use in an internal combustion engine?

A. That was taking gasoline in its popular sense.

Q. Isn't it a fact that these engines will burn fuel oil?

A. Yes, sir.

Q. Isn't that an internal combustion engine?

A. It is—I didn't have that in mind.

Q. That isn't a—

A. I had in mind automobile motors rather than heavy duty engines.

Q. Will you limit your definition to an automobile motor?

A. Not necessarily, but to motors of that general type.

Q. Isn't the product that will operate a gas engine gasoline? A. So called, also called naphtha.

Q. In refineries generally—?

A. I would like to state, in connection with that I used gasoline in its more or less limited sense of today.

Q. That is not the only sense—?

A. I can testify gasoline being used in gas engines and such types of motors, where it is definitely listed as such.

Q. Would you say gasoline that does not meet certain specifications for gasoline, is not gasoline because of that fact?

A. In the first place, if we say gasoline that does not meet certain specifications is not gasoline, it—

Q. Yes?

A. You mean the product that does not meet certain specifications is not gasoline?

Q. Well, can you state it that way.

A. I would state it that that is so, yes, sir.

Q. Take, for example, a quart of gasoline which is produced by a still run process? A. Yes, sir.

Q. Its color, normal, when it is properly prepared, its gravity and all of the other characteristics meeting with the specifications in the refinery but do not meet the specifications of the sale, is it gasoline when it is produced from the refinery or is it only gasoline when it comes up to these particular specifications?

A. It is my practice in the refinery to call such products naphtha, although finished—although unrefined or unfinished until they meet gasoline specifications, until so blended and so put through the process to meet the specifications involved in the sale of the gasoline in question.

Q. Suppose they did not exactly meet all of the specifications, wouldn't they inherently be gasoline just the same?

A. They would inherently be substantially the same product, but I would not call it gasoline in the ordinary practice, in my experience with the Pierce oil plant, we called everything naphtha with the various qualities until it reached the stage when we applied, when it reached the finished stage and ready for shipment. The company's trade name for output number 2, was pennant gasoline, I don't claim the mere calling of it naphtha would—at one time and gasoline at another time inherently change the characteristic of the product.

Q. That is, if it is gasoline from its major qualities, it would still be gasoline whether it met certain particular gasoline specifications or not? A. It might be for some purposes.

Q. We will not limit it to any purposes. The tariff does not limit say satisfactory gasoline.

A. Yes, sir, it would be naphtha in the unrefined state.

Q. It would also be unrefined naphtha, would you say that? A. As unrefined, yes, sir.

Q. In your experience, the Tidewater and the Pierce Corporation and the Cosden Company, did any of these three companies call the commodity you have designated as an unrefined naphtha or by that name? A. Not specifically, no, sir.

Q. Did you hear anybody other than the defendants in these cases call it unrefined naphtha?

A. I have heard it so referred to, yes, sir.

Q. In general refinery parlance?

A. No, I wouldn't say general refinery parlance. In general refinery parlance it might be more usually referred to as compression blend or casinghead naphtha blend.

The Court: Which would be more appropriate for it, gasoline or unrefined naphtha?

A. In a generic sense, unrefined naphtha would be more proper than unrefined gasoline, but neither of the two terms in my opinion are quite descriptive enough for general refinery usage.

Q. You spoke of the still gases being compressed and called gasoline?

A. Yes, sir. That depends on the refineries.

Q. And you call the straight run product of stills, straight cut gasoline by the name gasoline, don't you?

A. Yes, those may be used in a confused way.

Q. Then if you blend the straight run gasoline with straight cut or still run gas and do you call that unrefined naphtha?

A. What do you mean by straight run as compared with still run gasoline?

Q. The still gases?

A. The gas from compression plant in a refinery?

Q. Yes, and you mix that with straight run?

A. From stills, yes.

Q. I understood you to say that you call that unrefined naphtha?

A. The first time I was speaking in the word gasoline, I was speaking of the finished product, but the first cut is called naphtha or benzine or some other term to designate it before it is gone through to the finished stage.

Q. Then your blend is to treat or blend it with more gasoline and call it gasoline?

A. That is not the same process that is usually applied? The usual process is to blend it with such other refined naphtha or products or unfinished gasoline or unrefined naphtha or unfinished naphtha as to develop into a satisfactory blend the customers of the finished gasoline you have to ship to.

Q. I understand you to say the term unrefined naphtha is not in general use?

A. The term unrefined naphtha as applied to what?

Q. Casinghead gasoline? A. Not to my knowledge.

Q. That is all.

*Redirect Examination of Mr. Miller by Mr. Swacker.*

Q. When you gave the definition, gasoline, that it was a product that could be satisfactorily utilized to run a motor, an internal combustion engine, by that you did not mean, and comprehend as gasoline all materials that could be used in an engine, is that correct?

A. That is correct, I specified further to a certain range of boiling point, and have since limited that to the general combustion motor.

Q. But you did not comprehend to use all motors and limit the word gasoline?

A. Yes, sir, it is well known that there are different types of engines which use gas oil and fuel oil and crude oil.

Q. Why is it not a practical thing to do to blend the casinghead at the plant to a finished marketable condition?

A. It would require not only the heavy product known as heavy naphtha to make a certain blend but also a large portion of straight run products from crude to give you a satisfactory distillation test and performance in a motor. The satisfactory blend is not, is, in my opinion, one, as I have stated before, where the equivalent, the raw casinghead gasoline is held down to not over five per cent and that would mean that such a plant would have to have 90 to 95 per cent of other refinery products. That would be obviously impracticable and uneconomical for a casinghead producer to have shipped, to its plant, for a casinghead firm to have shipped to its plant ninety per cent as much stuff for blending purposes as it would ship out as finished product, yet it would be necessary to do that to make it entirely, an entirely satisfactory product from it.

Q. Either that or locate the refinery at the casinghead plant and as the wells are exhausted, move the refinery around from time to time? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And also will you state as to the degree of knowledge

and skill incident to the process of blending as compared with knowledge and skill utilized in casinghead production?

A. There is a great deal of difference between the two; the casinghead production practically is essential, requires into it a mixture or blending of sufficiently heavy boiling point products to cut your vapor tension to shipable limit; if you don't get it on this blend, you follow the process of blending it by weathering it until you reach the desired degree; in refining practice blending it includes the problem of blending for different percentages off on your distillation tests, blend for the end point, blend for the initial, blend for gravity, and in general blend to meet the various specifications, not one point, but anywhere from five to 14 points, including various distillation points in your curve and requires considerable experience and an intimate knowledge of the product that you are blending and the product you are trying to make, and usually the proportions are decided either by skilled chemists or men with long experience in the refining business.

Q. Now, you were asked the question, on your judgment, straight run refinery gasoline, meeting no specifications in particular, would be gasoline; what is the fact as to whether there ever is any such thing as straight run gasoline that won't meet some specifications of gasoline?

A. Well, a specification can be manufactured, and have been manufactured, which would include the ordinary straight run product of refineries.

Q. I am not speaking of all specifications, but I say any specification. To put the question differently: Is it not a fact that all straight run gasoline will meet some specifications, though it may not meet all specifications of gasoline?

A. If you are speaking of the physical specifications, it is possible to have a specification which straight run gasoline would not meet in any particular.

Q. Is it not a fact that all straight run gasoline, refinery run gasoline, will meet some specifications, may be not all specifications or some particular specifications, but there are specifications of such character that will accommodate any ordinary straight run gasoline?

A. I should say that would be true in a practical way, yes, sir.

Q. So there wouldn't be any such thing as straight run gasoline, and yet not be gasoline?

A. No, they belong to the same family.

Mr. Swacker: That is all.

Mr. Gann: That is all.

(Witness dismissed.)

And thereupon, DR. R. F. BACON, was produced, sworn and examined as a witness for and on behalf of the defendant, and testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Doctor, will you please state your name and residence?

A. Dr. R. F. Bacon; Pittsburgh, Pennsylvania.

Q. Have you any familiarity with the petroleum industry?

A. Yes, sir.

Q. What is your occupation? A. I am a chemist.

Q. Will you state your training and experience as such chemist and as to your present employment?

A. I was graduated in 1889 from *DePauw* University, I took the Masters Degree in chemistry in 1900. I took the Doctor's degree from the University of Chicago in 1904. I have also received two honorary doctor degrees from different universities in addition to that. I was in the government service, first in the Philippines and later in Washington, for some six years, until 1911. In 1911 I went to the University of Pittsburgh to what was known as the Industrial Research Department of that University to study petroleum. That is, doing work on certain industrial problems in petroleum. In 1912, I was made Associate Director of the Department of Industrial Research of the University of Pittsburgh; and in 1914 I was made Director, and about the same time the name was changed to the *Melon* Institute of Pittsburgh. I have been Director since that time. I have spent a great deal of my time in the last nine years in studying various phases of the petroleum industry.

Q. Did you practice your profession as well as your research work in the—in a consulting capacity?

A. I do some consulting work; very little. I devote most of my time to problems of various companies, problems of industry, technical aspects of the industry.

Q. Is that the Institute work?

A. That is the Institute work.

Q. State whether or not you have written on this subject and to what extent, and what?

A. I have written a number of technical papers on the subject of petroleum which have been published in technical journals, and Mr. Hamor and I also wrote a book on the subject of the American Petroleum Industry.

Q. You were a co-author with Mr. Hamor in the book described the other day, I believe, by Mr. Tabor, what is the title?

A. The title of the publication is the American Petroleum Industry.

Q. How many volumes is that work? A. Two volumes.

Q. It is a very comprehensive work on the subject?

A. I think so.

Q. Forget your modesty; does it cover the field?

A. It attempts to cover the field.

Q. Do you have anything to do with the gas service, did you, in the United States army during the world war?

A. Yes, sir. I was commissioned as a Colonel in the army and was on General Pershing's staff in France and had charge of the chemical work of our Army in France about one year up to the armistice.

Q. Of what technical societies are you a member?

A. I am a member of the American Chemical Society, American Electrical Chemical Society, American Institute of Chemical Engineers, Mechanical Society of London, Society of Industrial Chemistry of Great Britain, Chemical Society of Great Britain, Society of Applied Chemistry of France, American Consulting Society, American Society of Consulting Engineers, and quite a number of other societies.

Q. Any special recognition given your work in France with reference to the chemical work, and if so, what?

A. Yes, I received a citation from General Pershing for the work done in France.

Q. I intended to ask you this question before going to your qualifications, generally, before going into that; you heard the court ask Mr. Miller what the material now sold as gasoline was called before the large advent of gasoline, the product that is used today. Will you answer that question?

A. The answer to that question, the material now sold as gasoline was not manufactured prior to the advent of the automobile, and formerly the crude oil was all run into other products, and the material which we now call gasoline, which is commonly called gasoline, both properly in a common and technical sense, was not manufactured and sold prior to the date of the advent of the automobile.

Q. I don't know whether I finished your writing. You mentioned the work of Bacon & Hamor. What are your other writings? What other writings have you produced?

A. Produced a large number of papers in scientific journals and also have quite a number of patents in the field of the chemical industry.

Q. Quite a number of patents? A. Yes, sir.

Q. Are you now in the course of a work on the subject?

A. We are continually working on it, yes, sir.

[Q.] In connection with your chemical warfare work did you write anything at that time, did you prepare reports to congress on your work in France?

A. I did prepare reports to congress of that work.

Q. It is already prepared and submitted? A. Yes, sir.

Q. I suppose it is superfluous, do you read and keep advised of all the literature on this subject?

A. I try to keep up with the literature on this subject.

Q. And have a comprehensive familiarity with all literature on the subject? A. I try to have, yes, sir.

Q. Does your study embrace the product in all of its aspects or is it limited to the chemical aspect of refining or what?

A. I have tried to keep up with all the aspects of the petroleum industry, particularly as we expect, trying very hard to do that in the last three or four years, as we expect to revise this book which we got out four or five years ago, get out an edition, an up to date edition, and we are trying to keep up to date in all phases of the subject.

Q. Have you had occasion to make tests of various kinds of petroleum products?

A. I have made a very large number of tests.

Q. What kind of tests have you made, both physical and chemical? A. Yes, sir.

Q. Has your study embraced the matter known as casing-head gasoline? A. Yes, sir.

Q. Do you recognize the materials shipped from Jenks to Port Arthur and Drumright, shipped from Jenks, Drumright and Keifer to Port Arthur, heretofore testified about, are you familiar with it? A. I think so.

Q. Is that material properly called gasoline?

A. It is not in my opinion.

Q. Will you state what the proper definition in a technical sense of the word gasoline is?

A. My definition for gasoline would be this, gasoline is a mixture of combustible liquids, a finished product that will satisfactorily run a motor car.

Q. Now, by that are you limiting or I mean intending or attempting to comprehend all material that will do that under the name gasoline, or merely placing limitations on the name gasoline?

A. I can perhaps answer the question a little better by showing what the situation is.

Q. Do that, please.

A. The demand for oil has been almost entirely in the direction of gasoline, so that owing to the tremendous number of automobiles that have appeared in use all refineries and all oil people have had to direct their attention to gasoline; in other words, the automobile industry has dominated the petroleum industry so that of the product which is made of lighter hydro carbons from petroleum today, and I think the same

thing would apply probably for the last three or four years, 90 to 95 per cent is used only for one purpose, that is, for the purpose of running automobile engines. Consequently, I am inclined to believe if anything would come along tomorrow that would properly run an automobile engine and it was derived in large part from petroleum, that that material would properly be called gasoline.

Q. What have you in mind, some new development like this cracking process?

A. I have in mind this, that the situation is so desperate at the present time in regard to supplying the demands of automobile users, that every refining company is reaching out for material which can possibly go into gasoline and make a product that will satisfactorily run an automobile, and I haven't any doubt that in the next three or four years, possibly sooner, new material will come in, and if those materials go in with petroleum distillates, I believe that that product is correctly called gasoline.

Q. That is ordinarily used in the products sold as gasoline fractions below the naphtha fractions, that is true, to some extent, material from fractions below naphtha fractions?

A. I don't know what you mean by naphtha fractions.

Q. Of petroleum?

A. Naphtha fractions include all fractions from the very beginning up to illuminating oil.

Q. I mean of the average material that the naphtha fractions—

A. You speak in the sense of Baume scale of gravity?

Q. Yes, that is the way I use the expression. My question is, is it not the fact that materials being used and sold as gasoline, contain portions of the crude heavier than the naphtha fractions?

A. Heavier than the naphtha fractions were a few years ago, and our definition now extending up to the burning oil is properly denominated naphtha.

Q. The scale of what is naphtha fractions is gradually widening?

A. Yes, sir, the same thing is true in the early days. In the early days, when they wanted kerosene, kerosene or lamp oil, the naphtha fractions were exceedingly narrow, and they run as much as they could, and nowadays they make it is wide as they can. The thing is constantly changing.

Q. As to the word gasoline, is that the sense in which it is properly used as a name in the article of commerce, what is it?

A. I feel so, I thought a great deal since this case came up, what a proper definition of gasoline was, and it is very

difficult to make one. But I believe this is not only technically correct, but also correct in a popular sense. I feel if I backed my car up to a curb and ask for gasoline and got something that would not run my car, that would give me the belief that I was not getting gasoline; and if I backed my car up to the curb and got something satisfactory to run the car, that that stuff is gasoline.

Q. Is the definition limited to the finished commercial article?

A. I don't believe the terms gasoline, kerosene, lubricating oils, which includes the three principal products of petroleum, have ever been correctly applied, except to the finished product.

Q. Though frequently loosely applied to the material of which the finished product of that name is to be produced, is that correct?

A. That is correct, because it has been a tendency by the refiners and the people in the business, to apply a name to a thing of the product to which it is to be applied.

Q. And what do they do when they want to be particular in distinguishing it from a finished product in such cases?

A. And then they try to apply a correct name, but I must say the correct names vary in different sections of the country, and there is considerable confusion in the name, but I don't believe the term gasoline is ever correctly applied except to the finished product. As a refiner, they speak of the product which first comes over from the crude oil as gasoline; what they mean is gasoline distillate or distillate intending to become a part of gasoline at some time in the future; that is, they are thinking of the use.

The Court: How much longer before you will be through?

Mr. Swacker: I will be through in about fifteen or twenty minutes.

The Court: All right, we will take a recess now. Gentlemen of the jury, you may go under your instructions heretofore given you, the admonition of the court heretofore given you, and you will be back here at 1:45.

(Whereupon the jury retired from the court room.)

The Court. Now, the matter that was brought up this morning. I will state it should not be heard in the presence of the jury. I said I would hear the government.

Mr. Gann: During the session yesterday, it was suggested that a test be made jointly by the representatives of the government and the defense. The plan was made

to take a test last night or today on the actual running of an automobile with the substance shipped from Jenks, Kiefer and Drumright. Yesterday afternoon I asked Mr. Swacker how many of us would be permitted to join in the test. He said any or all of us. Along about six o'clock Mr. Sanderson, representing the Gypsy Oil Company, appeared and said he was ready to take two or three of us down to Jenks. When it came to the question of transportation he only had a roadster that could seat three passengers, and he was going, the superintendent of the Drumright plant was going, and one of the government's men. I suggested that several of the government people would like to participate in the test, and this was at six o'clock. He said, "Very well, I will go up town and get a car and I will be back in ten minutes." We said we would wait downstairs, right in front of the door, for him. We waited 45 minutes and he didn't appear. Then we went up to the Tulsa Hotel Taxicab stand and hired two automobiles and seven or eight of us proceeded to the Gypsy plant at Jenks. We were met there by Mr. Haden and Mr. Miser, assistant superintendent and engineer, respectively, who greeted us cordially, started to show us through the plant. While we were in the act of going through the plant, Mr. Sweet, superintendent, appeared, and within ten minutes afterwards, returned to where we were and told us he had received instructions from the office in Tulsa not to permit any of us to go through the Gypsy plant, furthermore, we were not to remain on the premises, but were to take ourselves and our cars outside the gates; this we proceeded to do. Mr. Sweet said that Mr. Sanderson had told him that he was then en route to Jenks, and would be there in a few minutes. We waited patiently in the cars outside the gate for more than an hour, and Mr. Sanderson did not appear, nor did any representative of the Gypsy Company. At the expiration of this time, in company with one of the gentlemen, Mr. Payne and myself and two others, we went to Mr. Sweet and asked to be permitted to buy fifty gallons of the commodity that was usually shipped to Port Arthur. Mr. Sweet stated he had none at hand, and it would take some time to manufacture it, and furthermore, he would not sell it to us, nor would he be permitted to give it to us. We left him, and proceeded to another gasoline plant, and asked to be permitted to purchase some easinghead gasoline as nearly like this product as we could. The gravity was found to be only 72 degrees, so we did not purchase it. We went to a second plant, and purchased a quantity of 86 degree gasoline direct from the

tank. We drained the automobile in which we were, of its gasoline. It was a Packard car. We put ten gallons of this naphtha or casinghead in the car and we drove back to Tulsa with it in the car as the motor fuel.

Mr. Payne: The vapor tension of this was  $17\frac{1}{2}$  pounds.

Mr. Swacker: Mr. Sanderson got the impression, I don't know whether from me, or from the government, that there were one or two government folks going, and he came down here and there were seven or eight wanted to go, and he told them he would go back and get a couple more cars. He said it would take perhaps ten minutes to do it. He went back to the hotel and started looking around for some of the defendant's experts to go along, also, and he was delayed more or less, he thinks half an hour, but it is immaterial, but when he got back here, the government folks had already preceded him and gone out to Jenks. He called up Jenks, and I also called up and told him that neither side was to take a sample by order of the court, but it was to be handled jointly, and I suggested to Mr. Gann that a representative of either side stay with the material until such time it was blended down or weathered down to ten pounds vapor tension, and then take care of it until the test could be made in the presence of both sides. Mr. Sanderson, learning that the government folks had departed without leaving any word for him, and gone on out there, telephoned his superintendent, instructing him not to allow them to do anything or have any material or samples until he should arrive. He had spent in the meantime some little while hunting around for them after they had left. Then he started out there and his driver insisted that the short road was in such condition he had better go the other road, and it took him about an hour and twenty minutes. In the meantime, the superintendent called me up and notified me these gentlemen were there, and we suggested that they wait, that Mr. Sanderson was coming. They did wait something like an hour or more, and then they departed without any of our folks knowing anything about where they went. When Mr. Sanderson arrived, he called me up and told me they had left, and asked me to try and locate the government folks and get some out there. This material can't be taken from the pipes, it takes time to weather it.

Mr. Payne: We were willing to use it unweathered.

Mr. Swacker: We were endeavoring to get the material—

The Court: I am assuming that both sides acted in good faith, but now I am going to withdraw this other test from the jury.

Mr. Swacker: Which one?

The Court: I will permit you to go out there and to go to all these plants and take tests. I am going to give you the opportunity of a fair test, and I will permit you to go there, and the government has the same right.

Mr. Swacker: Yes, sir.

The Court: I will give you a test, a fair test. You can agree on that, and I will let you make a test of all three of them, if you want to, and make them under agreement, under the supervision of the court. I think the best thing is for you to get your conveyances and let them get theirs. The government of the United States is rich enough to pay the expense out there. It is not rich enough, but it has money enough.

Mr. Swacker: If it is a question of expense, we will bear the expense.

The Court: No.

Mr. Payne: We don't wish that that be done.

The Court: Now, you can agree. I will not withdraw the evidence from the jury now. I will wait until after the experiment is had, and the new tests are made. I will not do it at the present time.

Mr. Swacker: We think they have made a mistake in their test.

The Court: We will just let it rest like it is now.

Mr. Swacker: We think it would be advisable if the court would have the clerk, or somebody, if he can't attend to the experiment himself, attend the operation, so that if any question arises as to what was done under certain conditions—

Mr. Payne: May it please the court, we don't like to make any accusations, but so many things that can happen that we wouldn't feel safe unless our gasoline expert, Mr. Dykema, who knows more about gasoline than anybody else in the country, have charge of the plant for 24 hours—

The Court: They will be permitted to see and make inspection to see what was done, so you can put them on the witness stand and challenge whether it is fair or not. I won't require them to turn their plant over to you, be-

cause they can make the charge against you. But I will require them to let it be jointly done. They can make the same charges against you if you had charge of it.

Mr. Payne: Mr. Dykema told me last night that he would want to clean the pipes, dry them up, from start to finish, and that would be the only way for a fair test.

The Court: Get the two men that are to have charge and we will take them back in my chambers there and have an understanding. I will give the defense an opportunity to have a fair test.

Mr. Payne: Under those conditions, we are perfectly willing.

Mr. Gann: The conditions have changed, your honor, since these shipments were made. The plants at Kiefer and Drumright are no longer shipping blended material, and I understand there is no naphtha there—no naphtha at either place, no naphtha with which to blend.

Mr. Swacker: There is a little there.

The Court: The jury can determine whether it is a fair test. I want both sides—my office is to see that the case is fairly tried. I want the government to join in an effort to have a fair test made out of it, so you can have a conference in the meantime and see when this can be done, and it will not delay the trial of this case a bit.

Mr. Payne: May it please the court, I would like to make this suggestion, that in view of the fact that products produced in various casinghead plants around there is practically the same, but the distillation tests are similar, and the gravities are similar, we would like to go to one of these casinghead plants, in the presence of anybody on either side, as a surprise test, any one that we might designate.

Mr. Swacker: That would be all right, only if we concede that that particular plant and the particular wells are of the same character. There is a marked difference in compression plants.

The Court: Suppose you test not only the Gypsy plant, but test them both.

Mr. Swacker: There is a marked difference in casinghead plants.

The Court: You can show the difference. Suppose you get a sample from the Jenks plant and get a sample from some other plant, and test them both?

Mr. Swacker: But an analogous character of plant,

The Court: Yes, sir.

Mr. Payne: Compression.

Mr. Swacker: Not merely compression, because there is a variety of compression plants, but an analogous plant.

The Court: All we want is to determine what the real facts are in this case. I assume that the government has their vision and that they are biased, and so the defense has theirs also. There must be an umpire somewhere. You must look at it with that view, that we get a fair test.

Mr. Payne: That is all we ask.

The Court: I assume they will be made, so in the meantime get together and have your consultations, and none of these insinuations on either side, in the meantime.

Mr. Diggs: Let the court fix the time.

The Court: I will take that up ten minutes before court is to convene, that is, twenty-five minutes before two o'clock in my chambers.

Mr. Diggs: I might suggest, nearly any arrangement as to time will necessitate absence of the parties involved during the course of the day.

The Court: Well, we can work that out, if we have to have a night session.

Mr. Diggs: We can make a test.

The Court: We will meet in my chambers twenty-five minutes before two and take this up.

Court will take a recess until 1:45.

(Whereupon court took a recess until 1:45 this afternoon.)

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#### AFTERNOON SESSION.

April 20, 1920, 1:45 P. M.

Whereupon court having met pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and counsel for the defendant announcing to the court that they were ready to proceed with the further trial of this cause, the following further proceedings were had to-wit:

Whereupon Mr. R. F. BACON was recalled for further direct examination by the defendant.

*Further Direct Examination of R. F. Bacon by Mr. Swacker.*

Q. Did you describe Doctor, the characteristics of the gasoline from the point of view of what they are composed?

A. I did only in a very general way.

Q. What would you say in that respect?

A. What would I say?

Q. Yes?

A. I made the definition of gasoline which had to do with its use, I said in substance that it was the finished article composed of inflammable liquids, mainly from petroleum which would satisfactorily run motor cars.

Q. Are there limits to its physical properties in the shape of boiling points by which you may know particular combinations of the lighter hydro carbon compound, but which would not be gasoline, and others which would be in that definition? A. I think you have the cart before the horse.

Q. You put it the other way then?

A. Well, in this sense we speak about boiling point and about Baume gravity and about distillation curves, that is simply one way that is a way the commercial world can look at these things and state that it is satisfactory gasoline, but the thing behind all this is the actual work on the engine, that is the first, at first these things have been made, then we—which we call gasoline has been actually tried in the engines and if we find it performs satisfactorily in an engine, then we make these boiling points and Baume gravity and so forth, so the second time when we get hold of new material that corresponds to the boiling point, gravity and so forth, then we can say on the basis of our first experience this second material will also perform satisfactorily in an engine.

Q. Now, have you made any experiments in connection with materials of this character, to determine their usability?

A. I make quite a large number of experiments; in fact, in the Mellon Institute we have a gasoline engine which is connected up with an apparatus to register the power it develops, and the way that is connected up with a *dynamometer* is with an electric motor, and the gasoline engine is run and the power delivered to the electric motor to a switch board so you can tell absolutely what the gasoline engine is doing, and it is arranged so we know about the test. I have tested on that machine a very large number of gasoline materials.

Q. You try it in the machine getting the record of what its performance is, whether it is good or bad? That is the investigation? A. Yes, sir.

Q. And then the other end of it is that you analyze this material so you can recognize its characteristics wherever you hit them, as to how they worked out in performance?

A. Then we make gravities and initial points and end points and we get a cure on the gasoline that we know is a good gasoline, because we work it out in the engine; we know it runs satisfactory in the engine. Then if we get a new gasoline, we could probably tell from its boiling point and its curve, as to whether it also would be a satisfactory gasoline. Then I might state further, that all of these tests of that kind are really based on work of general character, that is, probably in the beginning there were not many institutions that had engines set up in this way, but there were gasolines on the market that everybody knew ran a motor in a satisfactory way. These gasolines were tested and people said that because these gasolines satisfactory ran a motor car, that that was the standard. But in most technical institutions now, they go further than that. The thing we do at the Mellon Institute, and I think is done in all scientific institutions, we not only test the gasoline in the engine in the institutes where we can measure the horse power, but we get several different kinds of cars and drive them over a road near Pittsburgh, that has a lot of hills, and we see how they perform.

Q. In this fashion, you get the performance of any number of curves, is that the idea?

A. The curves are simply another way of telling what this performance has been.

Q. Just a sort of index to performance, is that the idea?

A. The same as I could write out a long story, telling all about what has happened in the tests in the laboratory, but we write it in a short story by means of a curve.

Q. Do you sometimes and have you sometimes tested materials supposed to be or considered to be gasoline and find that they wouldn't operate the engine at all?

A. Yes, I have tested material of that character, in fact, I have tested the material which is commonly called casing-head gasoline.

Q. What was your experience in that respect?

A. It was casinghead gasoline which I have tested, did not make the engine run at all; once in a while you will get one that will make the engine run in a very unsatisfactory manner. The engine will run along a little but delivers very little power and the consumption of gasoline will be very high, and perhaps an engine will spit and miss fire, and things of that kind.

Q. And I presume you plotted the curve of the material which you tested that failed to perform altogether as well as those that did perform? A. We have plotted.

Q. And by this plotting, you have made curves of that character, you are able to distinguish the particular gasoline

as to its possibility of performance, perhaps not drawing an absolute line, but at least in some cases you can disregard entirely when you see those curves, as being material that would perform as gasoline?

A. Yes, sir, you can tell very easily as to whether or not the thing is a satisfactory gasoline or whether it is gasoline which will not run a car. It is a point in between that will be difficult to say. But you can tell very easily whether it will run a car in a satisfactory manner.

Q. Those are so common and so well distinguished there is no difficulty in ascertaining whether it will or will not run in a satisfactory manner? A. No, sir.

Q. But there is a shadow between those that will run and those that will not run at all, is that true?

A. That is quite true.

Q. And you have some curves that will distinguish to you material that will absolutely not run? A. I think so.

Q. And others which might or might not run?

Mr. Gann: I object to the attorney testifying.

Mr. Swacker: I don't think that is testimony. I am just clarifying the situation.

The Court: I think that is an objectionable manner of examination of the witness.

*By Mr. Swacker.*

Q. Then the sending from the character of curves which you have last described would distinguish to you a material being incapable of being performed as gasoline, what are there in the various character of curves, that distinguish to you a material that would operate a car satisfactory will these curves range? A. Please repeat the question.

Q. I will state the question over. The last curves you described were those which distinguished a material as incapable of performing as gasoline; that is, that would distinguish it with certainty. Is that correct?

A. There are such curves.

Q. State the range of curves that will exist between that and those which you know will perform satisfactorily as gasoline.

A. A substance to perform satisfactorily as gasoline must have comparatively small amount of very volatile constituents, must have a moderate amount of intermediate and may or may not have a moderate amount of end constituents. If a curve shows that a so-called gasoline has a very large amount of very large curves and a comparative small amount of intermediate curves and a moderate, or no amount of end constit-

vents, such a curve would indicate such a material would not satisfactorily run a motor car.

Q. Curves in between the two curves you spoke about, would they or would not they run a car?

A. There are all degrees.

Q. Some you can distinguish as being ones which would run properly—probably run a motor car, but poorly?

A. Yes, sir.

Q. I ask you to look at this paper and see if you can identify it?

The Court: Have it numbered first.

Q. I hand you Exhibit No. 140 and ask if you can recognize that sheet and state what it is?

A. This represents certain curves made of two so-called gasolines. The curves was made by Dr. Garner, I believe.

Q. That is by distillation tests, shown on them?

A. Yes, sir.

Q. Is that the way you get at them? A. Yes, sir.

Q. One of them is in ink and the other in red pencil?

A. Yes, sir.

Mr. Swacker: We offer that in evidence.

Mr. Gann: You say it was made by Dr. Garner, not made by you?

A. The tests were not made by me, the curves was drawn by Dr. Garner; I think I was present when one test was made, but not the other.

Mr. Gann: How long ago was this made?

A. Within the last three or four days.

Mr. Gann: What product, of the Gypsy?

A. Yes.

Mr. Swacker: I don't know, as he is competent to answer in that respect. This is simply an illustration. It is not claimed to be the product of a particular plant at this time.

Mr. Gann: What is the purpose of offering this?

Mr. Swacker: Just to show this testimony he is giving as to how a curve will be indicated by the material.

Mr. Gann: As to whether it is casinghead or straight run gasoline?

Mr. Swacker: On certain range of boiling points.

Mr. Gann: Alright, we have no objection to that.

Q. Look at this Exhibit 140, I will ask you if you can, based on your experience and observation in testing these ma-

terials, in these particular tests, by tests of this character of material generally are you able to say whether or not the curves in ink would be the material that would operate a car with gasoline, an ordinary car?

A. I would say the ink material would not.

Q. What would you say about the lead pencil material if you can?

A. That would certainly operate very poor if at all. It might operate very poorly, we are getting into the shadow then that we were talking about.

The Court: You offer this in evidence?

Mr. Swacker: Yes, sir.

The Court: There seems to be no objection, it may be admitted.

Mr. Swacker: The figures shown on this I presume are the percentage plus distillation runs, distillation running up and down the page and the temperatures across the bottom. That's what they are?

A. That is correct, yes, sir.

Q. Those temperatures are Fahrenheit?

A. Those temperatures are Fahrenheit.

Q. Have you made any distillation tests of the particular material or participated in the making or observing of the making of the distillation tests of the particular material manufactured at Kiefer?

A. I was told this particular material of the distillation I saw was manufactured at Kiefer.

Q. You are one of the gentlemen to whom Mr. Sanderson gave samples of the material from Kiefer? A. That is true.

Q. He gave you no other since then, than those testified to by you as given you, that correct? A. That is correct.

Q. Nothing happened to those samples in your hands until after these distillation tests were made? A. No, sir.

Q. You testified having made distillation tests and observing them of this particular material from Kiefer, assuming that material Mr. Sanderson gave you was such?

A. Yes, sir.

Q. Will you say whether or not that was a usable gasoline?

A. The distillation test indicated it was not.

Q. Based on the curves resulting from the distillation test, you can say it was not? A. Yes, sir.

Q. Now, then, did you participate in the car tests that were made with that material, as to which Col. Burrell and Dr. Garner and Mr. Shock testified? A. Yes, sir, I did.

Q. Was your observance of the performance the same as theirs? A. Yes, sir.

Q. That is non-performance? A. Yes, sir.

Q. Now, it was suggested by interrogatories of Dr. Schock that might it not be possible water may have gotten into the carburetor, and in that case cause the non-performance. What was the fact as to the priming of the material—priming of the carburetor with other material in connection with that test?

A. Primed it with gasoline purchased at the curb in Tulsa.

Q. Primed it first with casinghead?

A. Primed first with casinghead, yes, sir.

Q. Did it start? A. No, sir, it would not start.

Q. Then what?

A. Then the casinghead was taken out from the carburetor and the carburetor again primed with gasoline which was bought in Tulsa and which was the same gasoline that had run the car out from Tulsa to the point of test.

Q. Then what happened?

A. The car started immediately and run about 100 yards, I guess, in the case of the Packard car, and about 200 yards in the case of the Dodge car.

Q. How far would this priming material carry it?

A. About that distance, and we tried to calculate it, and decided that was about the distance.

Q. Now, then, if there had been any water in those carburetors that would have interfered with the operation of the material when primed with casinghead, it would have been impossible for it to have gone under the prime with curb gasoline, isn't that true?

Mr. Gann: I object, your honor, to the form of the question.

The Court: Yes, I think that is objectionable.

Mr. Swacker: Well, I will change the form. I don't think it makes much difference.

Q. Can you say, as the result of those experiments, whether it was possible that the non-performance of the casinghead grew out of the presence of water in the carburetors?

A. Any possible water in the carburetors or in the gasoline used had nothing to do with the non-performance. If it is proper, I would like to say it is my opinion it wouldn't make any difference if it did have water in it, because I have often, in my cars, in trying to clean out the carbon, I have poured a whole bucketful of water through the cylinders. The car will run right along.

Q. Now, then, I don't know whether you answered the question, that is, whether it was possible that the non-performance was the result of water in the carburetors?

A. I said that the non-performance, that any possible water in the carburetors or gasoline had nothing to do with the performance. As a matter of fact, I am sure there was no water, unless you use the word in the sense of there being a trace which might have been discovered in the gasoline.

Q. Based on those tests, will you say whether this material is or not gasoline?

A. I would say this material is not gasoline.

Q. Will you say whether you regard the name unrefined naphtha as an appropriate name to cover this material?

A. I regard the name unrefined naphtha as a proper designation for this material, I don't think it is the most descriptive designation a person could think of, but certainly regard it as a proper designation.

Q. Do you regard that designation as comprehending more than merely casinghead?

A. Yes, sir, the term unrefined naphtha is a very broad term.

Q. What does it comprehend?

A. Comprehends any naphtha that had not been brought to a finished state.

Q. When you say any naphtha, what do you mean by any naphtha?

A. Naphtha is a term, I suppose we are confining ourselves to the petroleum business?

Q. Oh, yes.

A. Confining ourselves to the petroleum business, naphtha is a term which is used for any low boiling product of petroleum which boils below the illuminating oil fraction.

Q. Then that would embrace the material that you would regard as gasoline as you have heretofore described, would it?

A. Yes, sir.

Q. Now, have you made a study of the art of refining?

A. Yes, sir.

Q. What would you say whether blending as applied to gasoline and other lighter products is a part of the art of refining?

A. I think it is—I think there is no question but what it is a part of the refining.

Q. What is the effect of blending on the available gasoline supply of the country?

A. Has the effect of making it possible to very largely increase the available supply of the gasoline supply of the country.

Q. In the quantity of casinghead actually produced, or more or less? A. Much more.

Q. How is that—state how that is done?

A. It enables the refiner to make a wider naphtha cut than he could otherwise make because in every operation before you obtain the satisfactory gasoline, one must have a certain amount of the starting material, and a certain amount of the middle material, and a certain amount of the end material. Now, the casinghead gasoline, so-called, supplies more of this starting material than the refiner could get from other supplies which he might have on hand, consequently it enables him to use a wider cut and more of his total materials in the form of gasoline than he otherwise could.

Q. And what is the effect, on the casinghead itself, of the same operation blended?

A. It enables the casinghead manufacturer to find a market for his product; if it were not for the operation of the plant, there would be little or no market for casinghead products. I don't know what it could be used for. It wouldn't be used for anything in tonnage lots; so it would make a market for the casinghead product.

Q. Would it be practicable to use casinghead on—in its ordinary form?

A. Casinghead can be weathered down to a point where it would run a motor car, in a way not very satisfactory; but it will run a Ford, particular-a Ford; a Ford will almost run on rainwater. It will make a Ford run in a very unsatisfactory way, particularly a cold day it might get along very well; but if you tried to weather it down, the loss would be very large. I doubt if people would go into the casinghead business—I doubt if it would be profitable on that basis.

Q. Dr. Bacon, can you say is liquefied petroleum gas exactly the same thing as casinghead gasoline, or what is its relation to it?

A. The material known as liquefied petroleum gas includes a great many materials which casinghead gasoline, so-called, does not include, that is, in the term liquefied petroleum gas we include a lot of very light materials. Now, you couldn't say they are the same, any more than you can say gasoline and kerosene are the same. They have the same series of hydro carbons in them. We assume they are the same series of hydro carbons that run through crude petroleum. There are a certain set in kerosene, and a certain set in gasoline, and so forth. It is the same with liquefied petroleum gas as compared with casinghead gasoline. You have in the liquefied petroleum gas, you have the whole range. In casinghead gas, you have only part of the range, so that they are not the same material.

Mr. Swacker: I would like to state to the court, I am not familiar, very familiar with the practice in this

respect; we would like to put in a lot of literature on this subject, technical literature, we have books and copies here. I don't know what the rule is—if it is only on cross examination.

The Court: That is the only way to put it in, is on cross examination.

Mr. Swacker: One reason I think it might be competent, I think we have the right to offer it to show the use of the words in this technical business.

The Court: You can ask him and say how is the word used by this author. That is the way I understand the rule.

Mr. Swacker: Might we recall Mr. Tabor, who has compiled the data in that matter, in preference to taking it up with Dr. Bacon?

The Court: Yes.

Mr. Diggs: I have sent for some books and authorities to submit to the court—never mind, I understood the court had made a ruling—I did not understand—while I was away.

The Court: Are you ready for the plaintiff to proceed with the cross examination?

Mr. Swacker: Yes, sir.

The Court: Proceed.

*Cross Examination by Mr. Payne.*

Q. Did I understand you to say you were with the Mellon Institute at Pittsburgh? A. Yes, sir.

Q. Is not the Mellon Institute owned by the same interests that the Gulf Refining Company is?

A. The Mellon Institute is not owned by anybody; the Mellon Institute—I think I have what is in your mind, the Mellon Institute was an institution founded by Mr. Mellon as a philanthropic institution and is a part of the University of Pittsburgh and the general idea behind that was to build a scientific research institution that would demonstrate to the industry that research work properly done was a paying proposition. The Mellons don't own it at all.

Q. Who is president of the Gulf Refining Company?

A. Mr. Davidson.

Q. Now, referring to casinghead gasoline, when the gravity is high, or too high, for automobile purposes, what is usually done to bring it down?

A. To make it satisfactory?

Q. To lower the gravity?

A. We don't think of it in that purpose; we don't care what the gravity is. It is the question of making the greatest number of points correspond so as to make a satisfactory fuel. If you want the thing, to think of it from the standpoint of gravity, only what we do is add substantially of a lower gravity, but you might add a substance of low gravity and not—and then not obtain satisfactory motor fuel; that is, gravity standing alone means nothing.

Q. If your initial boiling point were considerably too low for satisfactory operation, how could you cure that so as to make it satisfactory? How is it usually cured?

A. The initial boiling point, alone, has nothing to do with it; in fact, would always be glad to have the initial boiling point low, but the initial boiling point alone means absolutely nothing in regard to gasoline.

Q. It has a great deal to do with the start of a car itself, does it not?

A. Not the initial boiling point—if you will tell me the fraction curve referred to in the first ten or twelve degrees I will be able to answer your question, but the initial boiling point means absolutely nothing.

Q. What is that taken for?

A. So we will have a start for the curves. The thing we are interested in is the fraction of the first ten degrees.

Q. What I am interested in is not the start of the curves, but the automobile? A. Yes, sir.

Q. The lower the point the quicker the car could get away, the quicker your automobile would get away?

A. Absolutely not, a small amount of ether—you could put that in your car and have a very low initial boiling point and that would be way down.

Q. In these various specifications, the initial boiling point is stated?

A. That is to give you the start of the curves and the thing the man is interested in, in which this substance will run a car is the first ten degrees.

Q. Let's forget about this curve? A. Yes, sir.

Q. Now, in specifying the distillation tests for gasoline what is the purpose of specifying the boiling point, an initial boiling point?

A. The purpose is to make a curve. Now, perhaps I can explain it.

Q. You mean a curve with the automobile? A. No, sir.

Q. I asked you to tell about the automobile and forget about the theoretical end and get down to the practical?

A. If a gasoline contains a small amount of volatile con-

stituents, then it will run a car in a satisfactory way, providing the other materials which I have specified before are present in the gasoline. If it contains a very large amount of volatile constituents, then it will not run a car.

Q. The lower the volatility, the lower the initial boiling point, is that correct?

A. No, you will have to speak—you are trying to ask a scientific question in an unscientific way.

Q. No, hold on. The lighter the material, the quicker it will boil, is that correct, at a lower temperature?

A. Perhaps I can state your question.

Q. I just want you to answer my questions.

The Court: Just answer yes or no.

(Question read by the reporter.)

A. That question don't mean anything at all.

Q. In your distillation tests, isn't it a fact that the lighter and more volatile the material is the lower the temperature at which it will boil?

A. That is correct, yes, sir.

Q. And isn't it also true that the lower the boiling point the quicker it will vaporize in the carburetor?

A. The lower the boiling point the quicker it will vaporize in the carburetor. That is also true.

Q. In other words, is it not a fact, that specifications usually designate a minimum boiling point?

A. They usually designate a maximum boiling point.

Q. What is that in the government specifications?

A. I think that is 140.

Q. That is, it can boil anywhere up to 140 so that if it boils at 50 or 40 it is within the specifications to that extent?

A. Yes, sir.

Q. And if I get your theory correctly, you take what is, or rather whatever one calls gasoline, and if it is a little bit too volatile, it is not gasoline and you add a little naphtha to it and then it becomes unrefined naphtha, is that correct?

A. Please read the question.

(Question read by the reporter.)

A. Do you mean to ask me what every one calls gasoline? You mean casinghead gasoline?

Q. What is universally known as gasoline when it is gasoline, whether it comes from gas, or casinghead gas, or other material, or natural gas gasoline, is that—it is that kind of gasoline I am talking about.

A. If I understand the question correctly—Read the question.

The Reporter: The question is with the other reporter, who is out.

A. As I understand your question—if I understand your question to be that adding casinghead gasoline to naphtha, do I know that product unrefined naphtha, I do; I call it unrefined naphtha.

Q. You have a material which you call casinghead gasoline. It is somewhat too volatile, to lower the volatility you add naphtha to it, or some other petroleum product, and you get what you admit would be gasoline; is that correct?

A. I admit that is not gasoline.

Q. But you mean the final blended product is not gasoline?

A. If it is blended in such a way as to meet the specifications or leaving the specifications out of consideration, if it is blended in such a way that it will run a motor car, I call it gasoline; if not, I don't call it gasoline.

Q. If I understand you correctly, what is universally known as casinghead gasoline, you call unrefined naphtha, is that correct?

A. That is correct. I don't mean it is universally known as casinghead gasoline.

Q. Do you show that in your book?

A. I have no doubt it is called casinghead gasoline.

Q. Didn't you just call it gasoline?

A. I think probably because I have always assumed the word casinghead gasoline is really a compound word, because I have always known that casinghead gasoline was a different type of material from what we commonly call gasoline; perhaps I can illustrate what I have in mind better by giving an illustration. For instance, we commonly speak of black lead or graphite, a material in lead pencil—

Q. Now, we are getting a little too far afield. I will bring that out later.

Mr. Swacker: I think the witness ought to be allowed to finish his answer.

Mr. Payne: He is not answering the question I asked him.

The Court: Proceed.

Q. When this product which you in your book call gasoline is somewhat too volatile to denote as gasoline it can be properly called unrefined naphtha, is that correct?

A. Yes, sir.

Q. And you then add a little more of the same material to get it back to gasoline?

A. I did not say add a little more, but add the proper amount of the same material and other materials, and then you can bring it to gasoline.

Q. Now, as a matter of fact, is casinghead gasoline, unrefined in any respect, or is it not refined below the surface of the earth by a natural process?

A. I consider it unrefined because I consider any product that comes out of the ground unrefined. I would like to illustrate that also.

Q. You have a false assumption, because the gasoline does not come out, but the gas—

A. Yes, sir, gasoline comes out with the gas.

Q. Not in that state. A. I might say—

Q. Have you seen casinghead gasoline before it was blended, or anything done with it? A. Have I ever seen it?

Q. In a plant? A. Yes, sir.

Q. What plant?

A. I have seen it in several plants around Pittsburgh and the state of West Virginia.

Q. Now, after you—after this gas is liquefied and compressed into gasoline, is it not a fact that the liquid is a clear white color, is it not a fact that it has all the appearances of a high state of refined gasoline?

A. The product that comes out of the ground and as made by manufacture, as a general rule, is of a good color; that is, a color that approaches a water white color, but I don't consider that has anything to do with whether it is refined or not. I call the substance refined when it is up to the standard you are aiming at, and until it is up to that standard, it is not refined.

Q. So you adopt the commercial standard of barter and sale to determine the state of refinement?

A. I think that is all that anybody does. We have standards for everything, and particularly standards for the ordinary determination of whether a thing is refined or unrefined. I will be very glad to give you an illustration.

Q. I will ask you if it is not a fact a great many things may be in a high state of refinement, and yet not be such as to be marketable?

A. Yes. That is a point I wanted to illustrate, I wanted to give you, that is, exactly that point. I can give you several: Take sulphur; sulphur is under the ground in the State of Texas and Louisiana, is melted by hot water, and is pumped out of the ground with the water, and separated from the water that sulphur will run 99.7 pure, but that sulphur is shipped and sold as crude sulphur. Now, similarly, the reason it is done that way, that is the standard for crude sulphur, and in addition to

that, there is a standard for refined sulphur, and this standard don't meet the standard for the refined sulphur; the same as the gas components—

Q. Well, now is it a fact of your own knowledge, that this casinghead gasoline is usually shipped as unrefined naphtha?

A. I do not know of my own knowledge how it is shipped.

Q. That is all.

*Redirect Examination of Dr. Bacon by Mr. Swacker.*

Q. Go on with the illustration of copper refined or unrefined?

A. Copper as it is made in the plants of the mines very often will run better than 99 per cent of actual copper and it happens that the standard for refined copper is very high. The big use for copper—refined copper is conducting electricity and that requires exceedingly pure copper and this 99 per cent copper is sold as base copper or ana copper, whereas the refined copper is sold as electrolytic copper so you can't say a high degree of purity is refined or unrefined. It is refined if it meets the market standard and if it does not meet the market standard it is not refined.

Q. Can you illustrate from other commodities that the same is true of. Take sugar, glucose, what is the situation about that if you know anything about them?

A. I don't know so much about them from my own knowledge. The other things I testified to, I happen to know about that of my own knowledge from those industries.

Q. You went on to explain something about the use of compound words; you said you took casinghead gasoline and used that to be a compound word as distinguished from what?

A. The point I had in mind was this, that we call the stuff in lead pencils—we call it black lead and we shorten it down to lead. If I go into a store and I want to buy a pencil of this type, I simply ask for lead for these pencils. I know that is not lead; I know it is graphite. If I wanted to ship any graphite, I certainly wouldn't ship it as lead. We speak about casing-head gasoline and that was a compound word. I have no doubt used either portion of the word casinghead or gasoline referring to casinghead gasoline where the connection was obvious. I have assumed it was a compound word because the material was of a different character from gasoline.

Q. For example, german silver and silver, or quicksilver and silver? A. Yes, sir.

Q. And isinglass and glass? A. Yes.

Q. Now, you started to explain that gasoline comes out of the earth, will you finish that explanation; Mr. Payne cor-

rected you and referred to the gasoline coming out of the earth and you started to make some explanation, will you finish it?

A. I started to tell him about the analogy with sulphur. Water and sulphur comes up out of the earth and in the business of gasoline and gas comes out and we separate the sulphur and water in one instance and the gas and gasoline in the other.

Mr. Swacker: That is all.

*Recross Examination by Mr. Payne.*

Q. Can you name a technical word that denominates castinghead gasoline, any gravity, as unrefined naphtha?

A. I could probably name some that denominate it naphtha.

Q. That is the distinction here, refined or unrefined, unrefined naphtha, yes or no, please?

A. I can't offhand, no, sir. I might be able to find some but I can't offhand.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness excused)

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And thereupon, GEORGE H. TABOR, was recalled for further examination and testified as follows:

*Examination by Mr. Swacker.*

Q. Mr. Tabor, have you made an investigation of technical literature with a view to ascertaining the use of the terms naphtha contained therein? A. I have.

Q. Have you a number of references wherein that term has been used in such books? A. I have.

Q. This covers about five pages. I either offer it as an exhibit or offer to let the witness read it.

Mr. Payne: I object. It says unrefined naphtha. Otherwise it would be immaterial in this case—unless it says that.

The Court: You object to him offering it in that form?

Mr. Payne: We object to it.

The Court: I think the test is unrefined naphtha.

Mr. Swacker: I think we have a right to show the meaning of naphtha.

**The Court:** You have already shown that. You used the word naphtha. It will be considered. I will permit you to show by this witness this book, and this is a book in which the term unrefined naphtha is used in these so many times.

**Mr. Swacker:** I think we have a right to prove the term naphtha—

**The Court:** You can prove what naphtha is, the definition for it, and you may ask him what authorities support that definition. That is the way I understand the rule.

**Mr. Swacker:** I will do that, then.

**Q.** You gave the definition of naphtha when you were on the stand previously, did you not? **A.** I did.

**Q.** Can you say what authorities support that definition you gave?

**A.** Practical Treatise on Coal, Petroleum and Other Distilled Oils, Abraham Gesner, New York, 1865; by American Chemists, 1872, volume 2, pp. 401 to 405; by S. Dana Hayes. Report on Petroleum Oil Advantages and Disadvantages, by C. F. Chandler; American Chemists, 1872, volume 2, page 446 and 447; Export of Petroleum Products for 1874 and 1875, American Chemists, 1876, volume 6, page 252; as covered in petroleum and examinations by A. Bourgounon, General of American Chemical Society, 1879, volume 1, page 188, and following: Petroleum Distillations and Modes of Testing Hydro-Carbons by Allen Norton and Leete, New York, 1884; Report of Producers Technology and Use of Petroleum and Its Products by S. F. Peckham, Census Office, Department of Washington, D. C. 1885.

**Mr. Payne:** May it please the court, I understand an objection was sustained to this.

**The Court:** Well—

**Mr. Swacker:** The court sustained an objection to our reading the excerpt.

**The Court:** I asked him as to the definition of naphtha heretofore given by him and the scientific books giving the same definition. Now these books he is designating.

**Mr. Payne:** Is that not improper, as the witness is supposed to be stating his own opinion, and we could not challenge his opinion. It is not necessary to bring in all these authorities in the world on the subject. I think that is just unduly encumbering the record.

**The Court:** If his definition is to be controverted,

or it is a controverted matter in the case, a man might not be a famous expert, but the fact he is supported by a great many experts in the world, it seems to me that would be competent.

Mr. Payne: That is not controverted. We did not controvert it on cross examination, made no point.

The Court: Very well, if you do not controvert the definition of naphtha he gave in his evidence, I will exclude it on the ground it is irrelevant and immaterial.

Mr. Payne: We did not, and don't now.

Mr. Diggs: You asked for some authorities.

The Court: Well, but they say they don't controvert the definition he gave on naphtha.

Mr. Diggs: I understand the government admits that, admits it is naphtha.

Mr. Payne: No.

The Court: They don't controvert the definition he gave of what constitutes naphtha.

Mr. Swacker: The definition he gave embraces this material. That means that the government concedes that this material is naphtha.

The Court: No, that is a conclusion, as to whether it embraces this material.

Mr. Chambers: Then those authorities back there wouldn't be authorities on that definition.

The Court: The way I understand the rule, you can take up these books and say whereabouts is that rule? It is a rule and the basic principle is to get the truth!

Mr. Payne: Of the facts in issue.

The Court: Well, now you have got to prove what naphtha is to determine whether anything is unrefined naphtha.

Mr. Payne: If I remember correctly his definition of naphtha was used in the generic sense, that it was of light hydro carbons, including the fractions down to kerosene, but not including kerosene. Is that correct.

A. That is part of it.

Mr. Payne: What was that?

A. May be a different way, like the material in question in this suit, the unrefined naphtha that comes from the casing-head.

Mr. Payne: I will admit that.

Mr. Swacker: That will include that material. Similar to that you described as being a product of distillation. He says the term embraces that term in this product.

The Court: I think the way to do that is to prove it in the ordinary way. One may take these books. They are here in court.

Mr. Swacker: We will produce the books or photostat copies where the books are out of print and where no copies are to be had.

The Court: You may have these turned over to them, and if they desire to recall him or not.

Mr. Payne: That is not the question. The material which they call the unrefined product—

The Court: Now, anything has got to be naphtha would be unrefined naphtha. That is self-evident. In the process of proving, you can prove naphtha, what it is, then you can prove what naphtha unrefined is.

Mr. Payne: I have no objection to reading from those authorities, so long as it is understood that they relate to naphtha or unrefined naphtha.

Mr. Diggs: They speak for themselves.

The Court: Very well. I will rule the evidence thus far is competent.

Mr. Swacker: Let me go back and read such excerpts of these different books to which you have made reference as to determine the definition you give for naphtha.

The Court: I don't understand that to be the rule.

Mr. Swacker: That is what Judge Diggs just read.

The Court: I don't understand that to be the rule.

The Court: Not in evidence in chief.

(Whereupon Mr. Diggs starts reading from book: "Some Scientific Authorities"—)

The Reporter: I cannot hear you, Judge Diggs.

The Court: Let me have the book.

(Whereupon the book was handed to the court.)

Mr. Diggs: I want to suggest to the court and the United States attorney in his view the whole question turns on these words of what better method can we establish than the use of the words—

The Court: This is not a question of the use of the

words, it is the definition. I will not permit him to read this out of the book.

Mr. Diggs: That is another book here, your honor.

The Court: I will exclude them, I will permit you to go this far. Books or admitted authorities may be admitted in the evidence, I will permit him to state that such and such works, scientific works, support this opinion, but that is as far as I will let him go, unless it is raised on cross examination.

Mr. Diggs: If we can also ask the witness if the standing of the authorities to which he refers that support him, then we will be content to proceed on that.

The Court: No, just make your record.

Mr. Swacker: I thought, your honor, said a while ago you would allow him to state this is the scientific work and the only additional thing we want, that Mr. Diggs request is he be allowed to state his standing.

The Court: Very well, he may do that.

Q. In going back, Mr. Taber, to the first one of these books you have mentioned, being Abraham Gesner, who is Abraham Gesner?

A. He was always writing on petroleum, petroleum American products.

Q. Is he a recognized authority or writer or otherwise?

A. His work is out of print, but much sought and the things he stated about petroleum has been found to be true in many cases in which he stated was a matter of his opinion.

Q. Who is F. Dana Hayes, you mentioned?

A. F. Dana Hayes is a chemist and geologist of national standing.

Q. And his work on history and manufacturing of petroleum products, is that regarded a scientific work of value?

A. It is published in the American Chemist in 1872 and considered worthy of publication, which is a scientific publication.

Q. This C. F. Chandler that you mentioned here on the export of petroleum oil and its advantages and disadvantages?

A. C. F. Chandler was for many years was considered the greatest authority on petroleum in this country. Had a—I think the professor of chemistry of Columbia college, I think he is Emeritus professor he was head of the state board of health in New York sometime in the early 70's and he prepared a code for the petroleum oils, safety code, adopted by the State of New York, for handling, he recently received a medal

from them for his standing as a chemist at the hands of the chemical society of New York.

Q. What is this American Chemist? Is that a scientific publication? A. That is a scientific publication.

Q. Of a periodic character? A. Of a periodic character.

Q. How does it stand in the literature of this character?

A. Its articles are saved and quoted from.

Q. The next item you read was from that paper, the export of petroleum products? A. For 1874 and 1875.

Q. Now who was A. Bourgenon?

A. I am familiar with him by reading quotations from his writings in many books on petroleum.

Q. This purports to be from the Journal of American Chemical Society?

A. Yes, their article, written by him—I say his articles are quoted very much.

Mr. Payne: I object. I understood your honor had this under consideration.

The Court: No, I permitted him to state that such and such scientific books sustains the definition I have given of this term.

Mr. Payne: May it please the court, we are unable to find a Packard automobile in the city for hire. We have a Pierce Arrow available. Will that be satisfactory for a test?

The Court: Pierce Arrow is a standard car.

Mr. Swacker: As far as I know, yes, sir. It is strange they can't find a Packard—

The Court: For hire, yes, sir. The owners don't want to hire them out. They are a high priced car.

Mr. Swacker: I think we can go over to the Tulsa Hotel, across from the Tulsa Hotel, and find one.

Mr. Payne: Hold on, Mr. Swacker.

The Court: Any objection to a Pierce Arrow?

Mr. Swacker: We will try them both.

Q. This Journal of American Society, that is a technical journal?

A. A technical journal of high standing, and likewise as authoritative.

Q. Who was Allen Norton Leath? A. Petroleum writer.

Q. A writer on the book of petroleum in the matters of tests of hydro carbons?

A. A book written in 1884 and published by the Oil Paint

and Drug Reporters Association. I have owned a copy since 1885, and I value it highly for the interest of its contents.

Q. Who was S. F. Peckham?

A. Special agent of the United States Census office in connection with the census of 1880; he was an eminent writer on petroleum.

Q. Published under the Department of the Interior?

A. Published under the Department of the Interior of the United States.

Q. Who was William T. Brandt? A. He—

Mr. Payne: Is he giving the pages?

The Court: No.

Mr. Swacker: I will give them in a minute.

Q. Who was William T. Brandt?

A. William T. Brandt, a writer on many technical subjects. I know him only by this book written in 1895, which covers the petroleum business at that time, very thoroughly, according to my knowledge.

Q. Petroleum, Its History and its Origin, is that title?

A. Yes, sir.

Q. Going back—

The Court: Go ahead.

Q. Abraham Gesner, what book and page?

A. Pages 37, 38 and 39.

Q. And in the S. Dana Hayes article?

A. American Chemist, 1872, volume 2, pages 401 to 405.

Q. Now, the Chandler article, page 404?

A. Yes, that is included in the report of petroleum, oil advantages and disadvantages, 1872, volume 2, pages 446 and 447.

Q. Now, what is the next, American Chemist Records?

A. The Export of Petroleum, 1874 and 1875.

Q. 1874?

A. Yes, I said 1874 and 1875. American Chemist, 1876, volume 6, page 252.

Q. Now, the journal of the American Chemical Society?

A. That was Journal 1879, volume 1, pages 118 and following.

Q. Now, the Allen Norton Leete book? A. Page 9.

Q. S. F. Peckham report? A. Page 166, 167, 258.

Q. Now, the William T. Randall book? A. Page 38.

Q. Now, hereafter, give the page record as we go on. What is the next one?

A. The next one is from a patent on oil converting prin-

ciples issued to Joseph H. Adams, United States Patent No. 976,975 granted November 29—issued November 29, 1910.

Q. What is the next one?

A. Obtaining naphtha from natural gas by George M. Saybolt, United States Patent No. 989927, April the 18th, 1911.

Q. What is the next?

A. Petroleum by Sir Boerton, Redwood, London, 1913, 3rd Edition, Volume 3, pages 13 and 14 and page 35.

Q. Any further reference, page reference?

A. Yes, sir, page 35.

Q. Any other page reference? A. That is all.

Q. Who was Sir Boerton Redwood?

A. Sir Boerton Redwood was an eminent chemist who had to do with the *controlling* of the laws—of the petroleum laws of Great Britain and his works and for his work he was knighted and he was an authority on the work referred to which in this country probably, until the issue of Bacon and Hamor book, previously referred to, was considered the best authority on the subject, most comprehensive authority.

Q. What is the next reference?

A. Industrial organic chemistry, by Samuel P. Sadtler, Philadelphia, 1912, 4th edition, pages 30 to 32.

Q. Who was Mr. Sadtler?

A. Professor Sadtler was a professor of chemistry of the Pennsylvania Schools of Medicine and is a writer and has been a writer and investigator of petroleum to my knowledge for about 30 years and that is as far back as I know.

Q. What is the next reference?

A. The Manufacture of Petroleum Products by F. C. Robinson, Metallurgical and Chemical Engineering, 1913, vol. 2, pages 389, 390 and 391.

Q. Who is F. C. Robinson?

A. He was chief chemist of the Atlantic Refining Company of Pennsylvania.

Q. Is that a very large refining company?

A. Very large and very prominent refiners.

Q. What is your next reference?

A. The next reference is Physical and Chemical Properties of the Petroleum of California, by I. C. Allen, W. A. Jacobs, A. S. Crossfield, and R. R. Matthews, Technical Paper #74 of the Bureau of Mines, Washington, D. C., 1914, page 10.

Q. You say, has that government publication, does it make any reference to the term unrefined naphtha?

A. It does. This quotation is a definition of unrefined naphtha.

Q. And does it comport with the definition you gave?

A. It does.

Q. What is the next reference?

A. This is a method of converting higher boiling petroleum of higher boiling points into lower boiling points by George W. Gray, United States Patent 11943540, issued on August 8, 1916.

Q. What is the next reference?

A. Do you want to know who Dr. Gray was?

Q. Yes.

A. Dr. Gray has been an oil chemist in many of the prominent oil companies of the country, including the Standard Oil Company of Indiana, the Standard Oil Company of New Jersey, The Texas Company and the Sinclair Company, and during the war appointed Director of the Bureau of Refining of the United States Fuel Administration.

Q. Now, what is the next reference?

A. Refinery Methods and Apparatus, Arthur Neal Kerr, of Tulsa, Oklahoma, United States Patent No. 1199903 granted October 3, 1916.

Q. Now, who was Arthur Neal Kerr?

A. I have no knowledge except being the patentee in this matter.

Q. What is your next reference?

A. Engineering Chemistry, by Thomas B. Stillman, Eastern Pennsylvania, 1916, 5th edition, page 335.

Q. Who was Mr. Stillman?

A. I don't know him otherwise than the author of this book, which seemed to be worthy of reaching the fifth edition.

Q. What is your next reference?

A. The American Petroleum Industry, by Raymond F. Bacon and William A. Hamor. New York, 1916, volume 1, page 129. Also volume 2, page 499. Also volume 2, page 500 and 501. Volume 2, 887.

Q. Who are Raymond F. Bacon and William A. Hamor?

A. Dr. Bacon, who just testified in this case, is the Raymond F. Bacon of the book.

Q. A writer of recognized authority on this subject, or otherwise?

A. He is a writer of recognized authority.

Q. And who is Mr. Hamor?

A. Mr. Hamor is an associate of his, I think he is an assistant in Mellon Institute of Industrial Research.

Q. Is he also a writer of accepted standing?

A. He is a writer of many scientific books.

(Whereupon [ ] convened after recess duly taken.)

*By Mr. Swacker.*

Q. That work contains reference to the term unrefined naphtha?

A. Yes, sir; the court stenographer has my memorandum.

By the Reporter: I will get it. It will take just a minute.

(Whereupon Reporter leaves court room and returns with manuscript.)

Q. You say Dr. Bacon mentions unrefined naphtha in his own work? A. He does, gives the definition of it.

Mr. Payne: I didn't hear that.

(Answer read.)

*By Mr. Swacker.*

Q. What is your next reference?

A. Obtaining Products from Petroleum by Decomposition and Hydro Carbonates by Horace D. Chamberlain, United States, 122x1790, issued April 3, 1917.

Q. What is your next reference?

A. Mineral Resources of the United States, 1915, United States Geological Survey, Washington, D. C., 1917, page 723.

Q. Is that a government publication? A. It is.

Q. What is your next reference?

A. Mineral Industrial Its Statistics, Technology and Trade during 1918, by G. A. Roush and Allison Butts, New York, 1919, volume 27, page 519, review of petroleum business by David E. Day.

Q. Who is David E. Day?

A. Everybody that knows anything knows about Dr. Day.

Q. Who is he, what is he?

A. Why, Dr. Day is connected with, has been connected for years with the United States Geological Service and later with the Bureau of Mines and carries all the weight, whatever it is, due to much connection in government service.

Q. What is your next reference?

A. Asphalts and Allied Substances, by Herbert Abraham, New York, 1918, page 267.

Q. Who was Herbert Abraham?

A. I am unable to contribute any information in regard to him.

Q. That is a technical work, however?

A. It has the appearance to be.

Q. What is your next reference?

A. Industrial and Manufacturing Chemistry, Part I, Organic, by Geoffrey Martin, London, 1918, 4th edition, page 7.

Q. Who is Geoffrey Martin?

A. An author on the book—merely an author of a book on a technical subject, as far as I know.

Q. What is your next?

A. American Lubricants from the Standpoint of the Consumer, by L. B. Lockhart, Easton, Pennsylvania, 1918, page 9, and at the beginning of chapter 3.

Q. Is that the same gentleman that you mentioned before from Eastern Pennsylvania?

A. I have no recollection of having mentioned him.

Q. Who was he?

A. As far as I am concerned, merely the author of that book, as far as my knowledge goes.

Q. Now, what is your next reference?

A. The Encyclopedia Americana, New York, volume 2.

Q. Volume 2? A. Volume 11, I should say.

Q. Mr. Tabor, have you had much experience in connection with patents?

A. I have had a good deal to do with patents.

Q. Can you say what the practice is with regard to patients with reference to the nomenclature which must be used in describing a process with respect to a patent?

Mr. Payne: I object, this is a railroad tariff and not a patent.

The Court: Yes, I think that is too far away.

Mr. Swacker: Just to show the use of the words.

The Court: I think that is getting too far away. This is a rate case and not a patent case.

Mr. Swacker: That is all.

#### *Cross Examination by Mr. Payne.*

Q. You spoke of several of those works defining the term unrefined naphtha? A. Two mentioning it.

Q. That all of those works that mention unrefined naphtha?

A. That is all that I have a memorandum of.

Q. The others all refer to naphtha?

A. Naphtha and other chemical subjects.

Q. Refined

A. In its generic and specific sense, refined and unrefined, crude, and various grades.

Q. Crude and unrefined mean the same thing?

A. Yes, sir, two different names for the same thing.

Q. And when it is fully refined, you call it just naphtha?

A. Oh, no, it depends on the trade, the designated name by which it is used. There is deodorized naphtha, stove naphtha, naphtha and a great many grades of naphtha.

Q. Then it would be a part that was refined and a part of unrefined naphtha?

A. It treats, all grades of naphtha are considered in this description.

Q. I will ask you to point out any work, the page number of the work that refers to casinghead gasoline and defines casinghead gasoline to be unrefined naphtha?

A. I haven't, did not seek to, I don't think there is a single reference here to casinghead gasoline. I do not recall, I would have to look through to be sure of it.

Q. Have you read a number of the works on casinghead gasoline?

A. Read a great many.

Q. Did any of those define casinghead gasoline to be unrefined naphtha?

A. I do not recall any at the present time, but I should not want to say it did not.

Q. You don't recall any you read?

A. No, sir, but I don't remember everything I read.

*Further Direct Examination by Mr. Swacker.*

Q. Will you say if the Bacon and Hamor work does not give a definition of unrefined naphtha that comprehends casinghead?

A. It does. As does the government publication previously reported.

Mr. Swacker: I think we have a right now to support that by reading the excerpts, only a couple of lines, each of them.

The Court: Yes, on re-direct examination I will permit it.

Q. Will you read what the government publication itself is on the definition of unrefined naphtha?

A. On page 10 of the Physical and Chemical Properties of the Petroleum of California, by I. C. Allen, W. A. Jacobs, A. S. Crossfield, and R. R. Matthews, Technical Paper No. 74 of the Bureau of Mines, Washington, D. C., 1914, page 10, in which authority is given, the result of the distillation of crude oil, defines unrefined naphtha, defines those fractions that boil in a temperature up to 150 degrees C., equal to 102 degrees, F., atmospheric pressure, in the next sense.

Q. Just a second. Is that within the range of boiling points of casinghead product?

A. That comes within that range. The authorities go on in the next paragraph and describe kerosene, being the next

fraction to obtain, so that these cover all the fractions from the starting of distillation down to kerosene oil.

Q. Now, what does Bacon and Hamor say?

A. Bacon and Hamor say, Vol. 1, page 129, of their work "Naphtha Distillate (Unrefined naphtha) as those fractions which boil up to 150 degrees C under atmospheric pressure.

Q. That is the same definition as that given by the government in their publication?

Mr. Chambers: I object to that as asking for a conclusion of the witness.

The Court: No that is a conclusion.

Q. That last definition that you have just read likewise comprehended casinghead product? A. It does.

Mr. Chambers: We object to that as asking for a conclusion of the witness.

The Court: Yes, that is a conclusion.

Mr. Diggs: Give us an exception.

Q. Is it a fact that all casinghead products involved in this proceeding is the material that boils at a temperature up to 150 degrees Centigrade?

A. They are all below what would be considered kerosene and these authors are intending to cover and the government publications state that they cover the fractions down to kerosene and the fractions below kerosene would cover the low points of this material in question.

Mr. Swacker: That is all.

Mr. Payne: Just a moment.

*Recross Examination by Mr. Payne.*

Q. In referring to this unrefined naphtha on page 9 of the publication you refer to, isn't it a fact that what they were talking about there was a fraction in the distillation of crude oil?

A. Fraction in the distillation of crude oil down to kerosene, the first product which is the definition I give of naphtha from the start down to kerosene.

Q. From crude oil? A. And call it unrefined naphtha.

Q. I believe you stated that that same definition of that fraction of crude oil is given in Bacon and Hamor? A. Yes.

Q. And Bacon and Hamor (Witness corrects the attorney on the pronunciation of the word Hamor.)

Q. Is it not a fact that in Chapter 11, on page 437, the authorities take up the question of condensation of gasoline materials? A. 437, is that the page I referred to?

Q. I will ask you if you recall what unrefined naphtha, what chapter you referred to as unrefined naphtha?

A. I don't remember what is on page 437.

Q. In the whole chapter?

A. I don't remember what is in the chapter.

Q. Isn't it a fact that it is invariably referred to as gasoline?

A. I can't say what is in a book of two volumes, I haven't seen in years.

Q. That is all.

Mr. Swacker: That is all.

(Witness dismissed)

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The Court: Let me have the statute under which these indictments are based. Proceed with the defense, call your next witness.

Mr. Diggs: Mark that defendant's exhibit 142.

Mr. Diggs: Defendant offers in evidence, certified copies of the bill of complaint of the Texas Company against the Texarkana and Ft. Smith Railroad Company, Walker D. Hines, Director General of Railroads, pending in the District Court of the United States for the eastern district of Texas, Texarkana division.

Mr. Payne: I object.

Mr. Diggs: Seeking to recover—

The Court: Let me see what it is.

Mr. Diggs: I have a right to make my offer.

The Court: Yes, but you offer it and I will see what it is.

Mr. Diggs: I am objecting to the United States Attorney jumping in here, which I submit to the court is neither courteous nor an orderly proceeding.

The Court: Very well, both of you stop.

Mr. Payne: And has no bearing—

The Court: Both of you stop.

Mr. Diggs: Does the court prohibit me from stating—

The Court: You are offering this as a certified copy giving the style of the case and number of it and I will see what it is and then you can state your grounds.

The Court: On what grounds do you offer it.

Mr. Diggs: The government introduced evidence in this case in chief, showing certain shipments of cars by this company of these railroad companies, the rates of freight paid—

Mr. Payne: May I interrupt?

Mr. Diggs: No.

The Court: Let him make his statement.

Mr. Payne: May I interrupt a second.

The Court: No.

Mr. Payne: Before he makes it. May I have an opportunity to explain.

The Court: You will be given an opportunity. Proceed Mr. Diggs.

Mr. Diggs: Showing the freight received on the cars, as I understand the purpose of the government in offering the proof and the court admitted it was for the purpose of showing nobody else in that section of the country shipped this article by the name we did and it was unknown but that now we offer this record to show that the specific cars mentioned in that evidence, The Texas Company is now seeking to establish to be unrefined naphtha and recover the excessive rate paid; for the purpose of showing the custom of the country and recognition of the term among shippers and producers of the same commodity.

The Court: Do you object?

Mr. Payne: Surely we do.

The Court: Well, do you object. No, just answer the question.

Mr. Payne: Yes, sir.

The Court: The objection is sustained.

Mr. Diggs: Give us an exception.

Mr. Diggs: Mark these defendant's exhibit, 143-144 145-146-147 and 148, if the court please now in offering of this, I want to say it was offered as a part of the cross examination of the witness in chief and at that time excluded by the court. We now offer the exhibits 143 to 148 both inclusive, being certified copies of the record in the case of the Gulf Refining Company, vs. The Texarkana and Ft. Smith Railroad Company.

The Court: Let me see that.

Mr. Diggs: Pending in the District Court, of Texas solely for the purpose, solely bearing on the motive of

the defendant, that is the only purpose we claim they are admissible for, the bearing on the motive of the defendant.

Mr. Diggs: It has been suggested to me by other counsel that the word "motive" is not sufficient, so I offer it for the purpose of proving both motive and intent.

Mr. Gann: The government objects.

The Court: On what ground.

Mr. Gann: On the ground that it is not relevant to the issues in this case, a matter pending in another jurisdiction.

The Court: Now, what is the last allegation in the indictment? What is the date?

Mr. Gann: May 16, 1919.

Mr. Diggs: None of the cars described in that are included in the indictment, I understand?

Mr. Gann: This proceeding was instituted on July 24, 1919, after the close of the transaction charged in the indictment.

Mr. Diggs: It is only offered for the purpose of motive and intent.

The Court: I can understand how, if a suit was filed, that would be evidence then of the good faith where they brought a suit and set it up, but not afterwards.

Mr. Green: Your honor, you see this was six months before the indictment was returned. We make the point in that way—we could be deprived of our defense, because that occurred long before the indictment and being arbitrarily stopped, the indictment might just as well have gone on.

Mr. Diggs: May I suggest to the court, the article was shipped; as long as it was delivered to us, we could show no step to show honesty of intention—

The Court: I will sustain the objection.

Mr. Diggs: Give us an exception.

The Court: Very well.

Mr. Diggs: Will your honor permit us to determine until in the morning to see whether we offer any further proof?

The Court: Very well. I will give you an opportunity to offer it. I want to proceed this afternoon.

Mr. Green: We have still these experts to recall.

The Court: Very well.

Mr. Diggs: Well, your honor, give us about ten minutes before we proceed.

The Court: Sure.

Mr. Payne: I don't think the expert testimony—

The Court: What is that?

Mr. Payne: I don't believe it would be fair for the experts to testify after our experts are on the stand.

The Court: They will only be recalled for specific matters.

Mr. Payne: They are liable to branch out.

The Court: I want to be fair with the expert witnesses in this case. I will control this case, and we are going to get through with this case. We will have to stop all of this today until day after tomorrow morning. They can't complete that until they have made that report.

Mr. Payne: They are going down this afternoon.

The Court: The statement was made it would take a day.

Mr. Payne: If it was thoroughly done, it would take longer than that.

The Court: This objection—I think you ought to think about it before you make objections in this case. This will delay—

Mr. Payne: I don't want to delay.

The Court: Now, naturally, they have a right to recall their experts for specific purposes. Your request that I say is all true—

Mr. Payne: No, sir.

The Court: That is what it means.

Mr. Payne: Just adjourn until tomorrow morning.

The Court: Why do you want to adjourn until tomorrow morning?

Mr. Payne: So that the defense can complete their case.

The Court: They can't complete their case, that can't be completed.

Mr. Payne: They are going down this afternoon, and I think they will complete it tomorrow.

Mr. Green: He is the very one that stated it would be.

The Court: Never mind. I don't need any suggestions from you.

Mr. Diggs: We rest, if the court please, but would like to reserve the privilege if we have overlooked anything, any paper that we want to offer in evidence, but I think, however, we have finally concluded.

The Court: I will let that reservation go to the discretion of the court, but if you can show me—

Mr. Diggs: If I want to offer it, if I can not show the court I am hurt by leaving it out, I will not ask to get it in.

The Court: I think this, as to these experts, they—that are to be recalled and testify, the rule on them ought to be on them while these other experts testify.

Mr. Diggs: We have no objection to the rule nor—

The Court: I don't know how many experts the reservation was made, was made to be recalled to testify further.

Mr. Diggs: Colonel Burrell—

The Court: Of course, he is not here. I remember—

Mr. Diggs: Dr. Garner and Dr. Bacon.

The Court: They are neither one here this afternoon, anyway.

Mr. Swacker: You mean other experts outside of them?

The Court: No, they are not to be recalled to testify further in chief, those—it is not to apply to them, because you may want to have them here. The evidence of the government experts, to hear that for the purpose of using them, and I will pass on the other question, as to whether or not the rule should apply to those, I just make this as a suggestion, in view of the statement of the government that it was unfair with them to proceed with that reservation; that was a suggestion made to my mind. I was trying to equalize the order, so you may now proceed with the rebuttal.

Mr. Chambers: This evening?

The Court: Yes.

Mr. Chambers: I think your honor better let us get together and line up our witnesses so we can commence in the morning. We never thought about commencing this evening.

The Court: I supposed you knew who you were going to put on the witness stand first.

Mr. Chambers: We would like to talk that over first.

The Court: If you state you think you need the time, I will grant it.

Mr. Chambers: I think we need it. It would be better to talk it over and determine which witness we want to use first.

Mr. Swacker: I think their experts ought to be precluded—

The Court: Well, you may have until tomorrow morning, then, to rest.

Mr. Swacker: I think we ought to put the rule on their experts talking to these experimenters. We put our experts on to testify and gone through this thing and then it is not a very fair proposition—

The Court: We will determine that in the morning. The jury will separate, under the usual instructions, and you may go now, under the admonitions heretofore given you by the court until tomorrow morning at nine o'clock.

Mr. Chambers: Nine o'clock, your honor?

The Court: Yes.

(Whereupon, the jury retired from the court room.)

The Court: Court will now take a recess until tomorrow morning at nine o'clock.

Whereupon, court took a recess until nine o'clock a. m. tomorrow morning.

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#### MORNING SESSION.

April 21, 1920, 9 A. M.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed with the trial of this cause, the following proceedings were had and done, to-wit:)

The Court: With reference to Exhibit 139, relating to order No. 1, of the Director General of Railroads, I quote this excerpt from the proclamation of the President taking over the railroads which was of date December 26. I believe: "Until and except so far as said Director shall

from time to time, otherwise by general or special order, determine, such systems of transportation shall remain, subject to all existing statutes and orders of the interstate commerce commission, and to all statutes and orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But, any orders, general or special, hereafter made by said Director shall have paramount authority and be obeyed as such." Order No. 1 is dated December 29th. Now I take it that Order No. 1 comes under these words "But any orders, general or special, hereafter made by said Director shall have paramount authority and be obeyed as such." Now, paragraph 7 of Order No. 1 is as follows: "Existing schedules or rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules or rates or orders as may hereafter be found to conflict with the purposes of said proclamation or with this order shall be brought immediately by wire to the attention of the Director." So the objection to the admission of this order in evidence is overruled.

Mr. Swacker: May we have our exception.

The Court: Yes. Now, I don't pass on the question raised by the government that under the case in 235 United States that to all intents and purposes this would be treated as a rate promulgated, transportation rules and orders. I don't pass on that question.

Mr. Swacker: Our objection is, it is not in compliance with the statutes and the proclamation.

The Court: Very well, proceed with the trial—now, the announcement that the defendant closes—stands—yesterday?

Mr. Swacker: We have one other thing.

The Court: All right.

Mr. Swacker: We want to ask the court to notice, and we introduce as evidence the Oklahoma statute affecting gasoline. Section 4353 of the laws—the revised laws of Oklahoma, 1910.

The Court: I will permit them to go into the record for the advice of the court, not to the jury.

Mr. Swacker: Our theory—

The Court: The court takes judicial knowledge—

Mr. Swacker: You have admitted a good deal of evidence to show the use of words, and I think that is proper evidence in that class, aside from the legal effect.

The Court: Any objection?

Mr. Chambers: We object, incompetent, irrelevant and immaterial.

The Court: You use the word unrefined naphtha—if you had used that word, I would let it go to the jury. I would like to know—

Mr. Swacker: Most of the evidence has been used on the word gasoline.

The Court: I will let the word and the term the way it is used gasoline, benzine, naphtha and other easily inflammable liquids of petroleum shall not be tested as flash tests but said fluids shall be tested as to its specific gravity.

The Court: I will let that part go in.

Mr. Swacker: The next succeeding part is what we want particularly.

The Court: That does not go in. These words are not used—

Mr. Swacker: It is descriptive of the words just preceding.

The Court: This does not relate to anything—it might be possible that it might be admissible on cross examination of an expert where he was testifying as to specific gravity. That is the only part that I will permit to go to the jury for the present. It may be it can be offered later under such shape as might be admissible.

Mr. Swacker: We, of course, don't want merely the part that has been read without the whole.

The Court: Very well, I will admit that much. But if you don't want it admitted without all of it, it is not incumbent on you to insist on a part, but I will not let all of it in, but I will let the part that used those terms go to the jury.

Mr. Swacker: Then may we offer the whole? If I understand the ruling of the court, you will exclude it then?

The Court: I will permit you to offer this much, and if you don't want any of it unless all—

Mr. Swacker: That is correct.

The Court: Then I exclude it. I understand the government objects.

Mr. Payne: Yes, sir, we object to that as not bearing on the question in issue as to whether or not this was gasoline.

The Court: I will exclude it.

Mr. Swacker: May we have an exception?

The Court: Yes.

Mr. Swacker: Now, we have a certified order of the Corporation Commission of Oklahoma on a proceeding pending before it, an opinion using certain expressions and descriptions involved in this case. We would like to offer this.

The Court: What is the date of that?

Mr. Swacker: Sometime in 1917. Does it not state so?

Mr. Gann: If your honor please, the government objects on the ground it is immaterial. The objection is to the reasonableness of the rate—

The Court: I think this much of it is competent, that an application was made some time in August, 1917, to the—by the Anderson Gasoline Company, where is it located?

Mr. Swacker: Nowata, I believe.

The Court: Nowata, Oklahoma, for an intrastate rate on shipments of unrefined naphtha or naphtha distillate and that the petition was denied.

Mr. Swacker: That is all it is offered for, showing the use of the term by others.

The Court: I will permit it that far. Any objection?

Mr. Payne: That is objected to, on the ground there is nothing in that opinion showing that this is the same as referred to here.

The Court: That is a matter, that is a matter to consider like all evidence. Now, they object to you showing evidence prior to December 2, because you didn't show the rates were identical, I let that in for two reasons: first, to show the practice in the business, and another was the evidence tended to show that the traffic manager of the Gulf was in fact the traffic manager of the Gypsy on the first the practices was in August, 1907—(1917) I can't tell when this is filed; this is on August 26th or August 28th. They are seeking rates on unrefined naphtha or naphtha distilled, the practice among refiners.

Mr. Gann: That is understood, but it is the blended material, your honor.

The Court: Well, that is all right for you to show that. But here is the use of the term; that is a matter of evidence. I allowed you latitude now in showing the use of terms among the refineries of the state. Surely they are entitled to the same rule.

Mr. Gann: We don't object to that. I think, also, there should be a statement that the value—

The Court: I just let this go to the jury for just what I stated, and they say that is all they desire.

Mr. Gann: Very well.

Mr. Swacker: I assume it will not be necessary to offer the paper. It will just go in on your honor's statement of facts.

The Court: Yes.

Mr. Swacker: Your honor still has under advisement our offer of the Texas statute.

The Court: Yes. I will pass on that now. I will exclude that for two reasons: first, because for all purposes of this case, the court takes judicial knowledge of it. Second, that statute was passed by the legislature in February, 1919, and did not go into effect until after the last date mentioned in the indictment, and on the question of showing dates, the terms used for that purpose, it appears to me to be too remote. And that act says, "For the purposes of this act." That might be a two-edged sword. The things that are excluded by the implication is but for that act, then that would be the name of it.

Mr. Swacker: The purposes of the act as stated—

The Court: In prescribing the gasoline to be sold and nothing else to be called gasoline. But now that, that act does not become effective until the last date in this indictment, now the converse seems to be true that by that act, then the other commodities not within these markets described would be called gasoline.

Mr. Swacker: We would not agree to that.

The Court: The way that occurs to me, it says, for the purposes of this act, the words gasoline was used alone or in connection with other words is applicable only to the petroleum products complying with the following named minimum and requirements, that act was approved March 24th, 1919, and became effective 90 days after adjournment. The legislature of Texas I think adjourned in May. But even that was the last date—no, adjourned about the first of March, the legislature, March, April, May, let's see, what the date is they adjourned. Mr. Green, you ought to be able to tell me that.

Mr. Green: There has been so many sessions, special sessions, I could not state without referring to it.

Mr. Swacker: On this question, I would like to show

your honor, call your honor's attention to this, that this was passed long before this indictment was returned and we should not be robbed of our defense by the government stopping the indictment short, short of some point, that just where the indictment is—

The Court: No, they adjourned the 19th day of March, 18, 18th day of May, so that would be in June. We have to pass on it because in the trial in this case, the government does not seek to hold you for any offense beyond that later than alleged in the indictment.

Mr. Swacker: But your honor has admitted the evidence, subsequent to then.

The Court: I let you introduce evidence.

Mr. Swacker: You let them, issue subpoenas duces tecum up to May the 31st, 1919.

The Court: I did not let them offer them in evidence.

Mr. Swacker: I think there is some evidence offered by them afterwards.

The Court: If there is evidence offered that is later than the date alleged in the indictment, as to any act on the part of the defense, it is excluded and the jury are admonished and instructed not to consider it.

Mr. Green: We think in order to get the benefit of that, the evidence should be selected—

The Court: Very well, you call my attention to it and I will strike it out.

Mr. Green: It is our position that this is admissible as a use of words and terms and having been passed by the legislature of Texas, while it went into effect before this indictment was returned a number of months, before the indictment was returned, we take it that the recognition by the legislature, a legislative body in the state where we are residents of the correctness of our position as to what gasoline is, in other words, that has been our notion of gasoline all time, in other words, this is a legislative body and this was the idea of the legislature and we are deprived of this defense because the government stopped the indictment.

The Court: No, no, I don't think it is competent.

Mr. Green: Note our exception.

The Court: Very well.

Mr. Diggs: We rest.

The Court: If I represented the prosecution I would

agree that would go in and ask the court to instruct the jury that that limited the term gasoline and that it was broadened up to that time.

Mr. Payne: If we didn't think it was error, we might, your honor.

The Court: Proceed.

Mr. Diggs: Defendant rests.

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The Court: The defendant rests. Proceed.

Mr. Payne: Call Mr. Moss.

Mr. Payne: May it please the court before we proceed with this witness, we find in checking over the record that a number of exhibits are in, but apparently there is no formal offer of them.

The Court: There was a general order made that all exhibits where they were identified that they would be marked and read into the record. That applies to exhibits on the part of the defense and the government.

Mr. Payne: So it may be considered—

The Court: That was the general order one day and if there is no objection that will apply to each exhibit that was identified.

Mr. Diggs: That is the condition of the record at present.

The Court: Yes, I made that order and that applies to the defendant's exhibits. There are a whole lot in the same status. The statement was made that where they were marked by the reporter, the court reporter would mark them read to the jury.

Mr. Payne: The point was, however, as I was told, that the exhibits were referred to, but not formally offered in evidence, although the court admitted them and we just wanted the record to show.

The Court: That was done to save time.

Mr. Payne: I now offer all this in evidence.

The Court: No objection, either on the part of the defense or the government, and that exhibit will be considered in evidence and shown in the record as read to the jury.

Mr. Payne: Before proceeding with this witness, I would like to understand the status of that test.

The Court: That is not a proper statement to be

made before the jury. You want to find that out—has it been made.

Mr. Payne: It has. I take it the defense will not have any further opportunity to put any of their witnesses on the stand.

The Court: They can offer the evidence now as to that if they are ready.

Mr. Swacker: We can offer it now.

The Court: All right.

Mr. Swacker: I understand they have not got the laboratory test yet, but can do that this afternoon—call Colonel Burrell.

Whereupon, COLONEL BURRELL was recalled to the witness stand for further redirect examination and testified as follows:

*Further Direct Examination by Mr. Swacker.*

Q. Colonel Burrell, did you make any subsequent test of the material manufactured at Jenks in company with the representatives of the government? A. I did.

Q. When did you make it? A. Last evening.

Q. Will you state just exactly what was done?

A. We proceeded to the Jenks plant of the Gypsy Oil Company, in accordance with the instructions of the court with representatives of both the government and the defense, two cars were used in the test, one a Pierce Arrow car, selected by the government, and one a Packard car, selected by the defense. This, however, was a different Packard car from the one we first used. Arriving at Jenks, the material, gas, natural gas condensate was withdrawn from what is called the make tank, that tank from which shipments were made at Jenks and weathered to a vapor tension of about ten pounds per square inch, a little under, I think. Five gallons of this weathered material, representing the material such as has been shipped from Jenks to Port Arthur in the past was put in each car, five gallons in the Pierce Arrow car, the government's car, and five gallons in the Packard car, the car of the defense. One representative from the defense accompanied the government men in their car. And one representative from the government accompanied us in our car.

Q. Which car were you in?

A. I was in the Packard car, the car belonging to the defense.

Q. State the occurrence with respect to the car you re-

mained in, as distinguished from the car in which somebody else went.

A. Yes. My observations were very largely confined to the Packard car, and we decided to run from the town of Jenks to the town of Kiefer, a distance of about twelve or thirteen miles, the country being comparatively flat and no hills of any consequence, and a very—

Q. What was the atmospheric condition?

A. The atmosphere was approximately fifty degrees Fahrenheit. A breeze was blowing, and I might say this—the atmospheric condition has a decided effect on the action of a motor car.

Q. Well, in what way, what influence did that have?

A. On a hot humid day, the car, the metal parts become heated to a greater extent than on a cold day, because there isn't the same chance for conduction of heat from these metal parts to the hot humid air. In other words, they are more nearly the same temperature. If your outside temperature is low, the flow of heat isn't as rapid. On a cold evening the car becomes heated less.

Q. Do you say, then, whether or not the conditions were favorable to the test?

A. I can say this, about automobile operation, that in cold weather, their casinghead gasoline, if it works at all, will work better than in warm weather.

Q. Go on and tell what happened.

A. The machines were started cold. This is, of course, favorable to the usage of natural gas condensates or gasoline, and, of course, it is different from the customary procedure, where one drives up to a curb station with a running engine and fills his tank at that station, and starts on his way. So I should say again that conditions were more favorable for the natural gas gasoline test than if the engines were started hot. Six or seven people were in the Packard car. It started without any difficulty and ran to within about nine or ten miles of Kiefer.

Q. Ran to within nine or ten miles?

A. It ran about nine or ten miles, that is, within two or three miles of Kiefer, where it absolutely stopped dead, and no amount of persuasion or adjustment on the part of our driver could make it go. Now, up to that time, its performance had been, I should say, very unsatisfactory. On the grades that I spoke about, because no hills of any consequence were encountered, the car lacked power. A Packard is a high powered car, a speedy car. It absolutely lacked power. It puffed and wheezed considerably, in other words, the engine acted in a very unnatural way. The car was abandoned two or three

miles from Kiefer and we proceeded on our way in another car to Kiefer. Every opportunity was given the government representative, any suggestion he had to make was taken advantage of, and it was with his full agreement and sanction that the car was abandoned as being unable to proceed any further.

Q. Then what did you do?

A. We proceeded to Kiefer, where further tests were made on the unrefined naphtha such as was formerly shipped from Kiefer to Port Arthur.

Q. That is blended or unblended? A. Blended.

Q. What happened there?

A. This unrefined naphtha or blended condensate or blended natural gas gasoline was perhaps in the ratio about 30 parts of naphtha, of about 56 gravity, with 70 parts of the natural gas condensate. It took a long time to prepare this material, I presume we waited and worked on the mixture three or four hours before it was finally secured of the proper proportions and of the proper vapor tension, the vapor tension was about nine and 8/10ths pounds, I believe. It was thoroughly agreed that it followed strictly the specifications of the unblended naphtha such as was formerly shipped from Kiefer. Five gallons of this material was finally put in the Packard car and I witnessed five gallons being put in the Pierce Arrow car, the same men who were in the Packard car in the test at Jenks were in this car in this test at Kiefer.

Q. Did you see how much of this gas was used in running the ten miles that you did run?

A. I think I made a notation to that effect, I will have to refer to my notes, if I made them, it was very approximately, I have not got that data with me, it is possible and probable that one of the other witnesses have it.

Q. Then you say that you put five gallons in the Packard at Kiefer? A. Yes, sir.

Q. What next?

A. I want to say again that was a different Packard car than the car we first used. We proceeded on our way with the government representatives accompanying us. I can say we had so much difficulty in starting the car that it was almost, it was almost officially pronounced abandoned. Finally, it was started and I have seldom ever, if ever, witnessed a more unsatisfactory performance of a motor car. The road was hilly; we proceeded from Kiefer to Tulsa and the car did everything that a car with a good grade of gasoline should not do. It had no power on the hills and on some of them—none of them were extraordinary hills, we would creep to the top at a speed or perhaps two miles an hour on low—on the level stretches of road there was no speed of consequence in the car at all, it

behaved abominably. We got to within two or three miles of Tulsa, and it again came to a dead stop, this was about two o'clock in the morning, but we had adopted the precaution of having a truck follow us with good gasoline. We did our utmost to start the car, and the test was abandoned, and we took some gasoline from the truck and placed it in the tank. About three inches of the Kiefer gasoline was in the tank and five gallons of good gasoline was poured in on top of it. Even so, we had a great deal of difficulty in getting what little of the Kiefer gasoline remained in the carburetor out of the way, and we were almost forced to walk home. Finally we got the carburetor running and started the car, and on this gasoline came in wonderfully, because the fact is a Packard car will run good if it gets a chance.

Q. Now, how long had you been in getting from Kiefer to Tulsa?

A. Well, I don't recall. It was a very long time for a motor car.

Q. Did you—

The Court: How far from Kiefer to Tulsa?

A. About fifteen miles.

Q. About what time did you leave Kiefer?

A. I didn't take the time.

Q. Well, haven't you any idea, approximately?

A. Somewhere between eleven and half past eleven, I think.

Q. Then you were approximately three hours making this twelve miles?

A. Somewhere between two and a half and three hours, I believe. You can get those exact figures from one of the other witnesses, I don't recall very clearly.

Q. What was the best speed the car made, and what would it ordinarily be capable of making under conditions containing gasoline?

A. It is very difficult to say accurately, because the speedometer on the car was out of working order; but I should say, on a good level stretch of road, where the car should easily make sixty miles an hour, and I have traveled sixty miles an hour over that road, a level stretch of road, we probably could make 25 miles out of it, but just as soon as we struck the slightest grade, we were lost.

Q. What were the atmospheric conditions, as to the temperature during the Kiefer to Tulsa test?

A. The weather was cool.

Q. Cooler than earlier?

A. Yes, it became cooler as the evening wore on.

Q. Given the same material and the temperature conditions on the previous test, what, in your judgment, would have been the result?

A. My judgment is it would not run the car at all.

Q. Would not have run the car at all?

A. No. I look upon this mixture as being one that under some conditions, favorable conditions, would run a car in a very unsatisfactory manner. On other conditions less favorable to the gasoline but under conditions under which motor cars had to be operated, it would not run. Many things influence the running of cars, especially if one has a mixture control, weathering conditions, adjustment of the carburetor, condition of the car, operator of the car, and so forth, although these cars were run by chauffeurs, men who make their living running cars, make most of the minor repairs themselves because it saves them money to do that. They were more experienced men in my judgment than the many thousands of people who operate them for pleasure only.

Q. This was a public car, was it, hired?

A. This was a public car, hired car.

Q. Have you ever seen a car of this character operate on material not at all pretending to be gasoline?

A. Will you restate your question some other way.

Q. My question is, have you ever seen other materials such for instance as crude oil actually propel such a car as that? A. I have.

Q. In other words, you could do as much as you did last night with crude oil, is that correct?

A. I have in mind a particular variety of crude oil which would run the car infinitely better than the material we are speaking about, I have tried it.

Q. What do you say, whether you could do that much with kerosene?

A. I could; I could do better with kerosene.

Q. Was there any nursing of air or anything of that sort to get it to do what it did do?

A. In endeavoring to keep it going, everything the chauffeur could do to it was done.

Q. You drained all the other material out of the car each time when you made the test?

A. Both cars were thoroughly drained and every opportunity given the other side to inspect them.

Q. What did you have? Ordinary curb gasoline going out?

A. Ordinary curb gasoline going out there.

Q. How did it run going out?

A. We did not come out in this particular Packard car,

but after coming back, after we had replaced the natural gas condensates with ordinary curb gasoline, it behaved splendidly and finished the last two or three miles.

Q. What was the condition of the engine on each of the occasions when it finally stalled?

A. I would consider it was very hot.

*Cross Examination by Mr. Payne.*

Q. Did you adjust the carburetor on the car, was there any change made in the carburetor?

A. I did not touch the car.

Q. Did not touch the carburetor? A. No, sir.

Q. Is it not a fact that by adjusting the carburetor you can use the lightest of gasoline?

A. I would not admit that.

Mr. Payne: That is all.

Mr. Swacker: Just a minute—

*By Mr. Swacker.*

Q. Have you made, is it the practice, a practical proposition to adjust the carburetor to such an extent as might use this material and utilize the car for ordinary purposes in such cases? A. I do not consider it practical.

Mr. Payne: I object.

The Court: What is it for?

Mr. Payne: I object to this question.

The Court: On what ground?

Mr. Payne: The practicability has no bearing on this.

The Court: You asked him if there was a carburetor on the car and if he attempted to adjust it, and they asked him that, to show, as an expert, why he did not try.

Mr. Payne: Well, that is not the question, whether or not it is practical.

The Court: He may state why he did not, if he thought it was not practical—that joins the issue. You can show it is practical. I think that is competent.

Mr. Swacker: No question about it.

The Court: I have ruled on it. Proceed.

Q. I asked if it would be a practical proposition to adjust a carburetor so as to make possible such a performance so you might use the car?

A. I would not consider it practicable, it is my experience

the average purchaser of a car is instructed little or not at all in the operation or construction of carburetors. Most of them, when they buy a car, and I include myself, in that the first car I purchased, about all that I would know is to turn the wheel and blow the horn—

The Court: That is not the question, does a man know, who is an expert—

Mr. Swacker: My question is this, whether—

The Court: For an expert to do that.

Mr. Swacker: My idea is this. This material as gasoline—might this material be used as gasoline, necessarily, to have a carburetor in order to use it.

The Court: That is another question.

Mr. Swacker: That is the one—

The Court: That is not the question.

Mr. Swacker: Did you do everything that was suggested by the government representatives in order to make the car work?

A. In my opinion, we did try to be very fair with them.

Q. What would you say, whether that material is or is not gasoline? A. It is not gasoline.

Mr. Swacker: That is all.

The Court: Just a minute. Dr. Burrell was on the stand the other day and a juror wanted to ask a question and I told him he could ask the question when Dr. Burrell was recalled.

The Juror: One thing, I wanted to ask, the distillation of a certain commodity, you said you made a distillation test?

A. Yes, we made a distillation test.

The Juror: I didn't get what you said was the recovery?

A. The recovery of the gasoline material?

The Juror: You said 83 per cent.

A. I said—

The Juror: Well, suppose you take 100 gallons and the distillation test, just the distilling—

A. Yes.

The Juror: You take 100 gallons and distill it, you get 83 gallons of what?

A. 83 gallons of the material you start with and lose the other 17 gallons in the air.

The Juror: What would the 83 gallons be?

A. It would be the remainder of this unrefined naphtha after the lighter portions, most of the lighter portions would have been lost in the air.

The Juror: That is all, I didn't get that clear in my mind.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: May it please the court, I think one expert on each side would be sufficient to tell all the story.

Mr. Swacker: Well, they can't for this reason. One went in one car and the other in the other.

The Court: Well, one expert for each car.

Mr. Swacker: I would like to call Dr. Garner to give the distillation tests of the material used.

Mr. Payne: We only had one expert there.

The Court: Which car did Mr. Dykema go in?

Mr. Payne: He went in the government car and Mr. League in the other car, he is not an expert.

The Court: Well, I will not require you to put anyone on except the expert. You ought to want the expert to go with this man that you are going to put on.

Mr. Payne: We are willing.

And thereupon, DR. RAYMOND F. BACON was recalled as a witness for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Dr. Bacon, did you participate in the tests made last night that Colonel Burrell has just testified in relation to?

A. I did.

Q. What did you do?

A. At the Jenks plant after the casinghead naphtha was prepared as Colonel Burrell has already testified, I went in the government car, the Pierce car. Do you want me to testify what happened?

Q. Yes, go right on and tell everything that happened.

A. The car was absolutely cold at the time we started and the car started alright and it ran apparently satisfactory nearly for about the first six or seven miles. I did not notice

any, did not notice anything but what the car was running alright for the first six or seven miles and then I noticed the engine was in trouble, the car first began to lack power and began to miss and was very evidently in trouble and this trouble continued until about just eight miles and the car stopped and the driver could not start it. The driver continuously trying to start it and every minute or so and it took 14 minutes at that point to start the car. I beg your pardon, it took 12 minutes to start the car and the car got started again, first half a mile after the car got started, the engine was still in trouble and had a little trouble and looked like it would stop again, but managed to keep on and after the first half a mile it seemed to pick up and run very well until we got almost to the plant at Kiefer and about a hundred yards out of the plant at Kiefer it stopped again and could not start it and it took five minutes to get it started in the second case and got it started and ran it into the plant at Kiefer; then as regards the second material, we put the blended or naphtha and casing-head condensate in the car, in the Pierce Arrow and the car started alright and the car ran all the way back to Tulsa without stopping; now it ran in fairly satisfactory manner, in fact, the only thing I noticed about the car in running back on this condensate it popped a few times and there was one hill in particular, it performed very badly. It almost stopped and the driver threw it into second and had a hard time getting up on second going rather slow, going six or seven miles an hour to get to the top of the hill and then it picked up again but it did not stop on its way from Kiefer—all the way to Tulsa.

Q. Was it necessary to do anything in the way or particular driving or manipulation of the air in order to accomplish this?

A. I thought the driver did manipulate the air as far as he could from his seat.

Q. What would be the effect of that? A. Well, of course, the reason these materials will not run a car, particularly if it is warmed, you are liable to get a very rich mixture in the cylinder, too rich to explode and if a man can manipulate the air far enough he can nurse the car along. I presume if the car was built right, there might be some way to make such mixture run a car—an ordinary car, it will not do it.

Q. Have you seen crude oil operate a car?

A. I have, yes.

Q. Will you say whether it was possible to operate the car as satisfactory as by the operation of crude oil?

A. I think undoubtedly crude would operate that car in a more satisfactory way. One thing I couldn't tell you what power the car had, the car run along pretty well coming from

Kiefer to Jenks and from Jenks to Tulsa, but the only man who knows is the driver, he can tell whether the car is delivering the power.

Q. Can you tell how much gasoline was consumed from Jenks to Tulsa and Tulsa to Kiefer? A. No.

Q. You don't know how much was left when you got there?

A. We intended to measure it, but there was evidently some mistake on the experts, and the first thing we knew they had poured the gasoline out.

Q. You don't know what quantity was used? A. No.

Q. What was the temperature taken by you in the Pierce car?

A. The temperature, as I recall them—at the time we left Jenks for Kiefer, the temperature of the air was 64 Fahrenheit. At the time we left Kiefer for Tulsa, the temperature of the air was 54, and at the time we got to Tulsa, the temperature was 46.

Q. Now, in your opinion, would you be able to have gotten even as good performance as you did under the conditions under which you performed the previous test you testified with relation to? A. You mean the crude oil?

Q. No, I mean the test you made previously with the material you got from Mr. Sanderson a few days ago?

A. I think the difference in the test was probably due, or at least largely due to different temperatures of the air, and I am inclined to believe if the test as we made it last night had been performed on a warm day, that the result would have been very similar to the result we obtained in the previous test.

Q. That is, that it wouldn't run at all?

A. I think probably it wouldn't run at all, but if it had, it would have stopped very quickly. We never could have done what we did in the second test last night.

Q. Will you say whether or not that material was gasoline? A. In my opinion, it was not gasoline.

Q. You say in your opinion it was not gasoline?

A. No, sir.

Q. Would you consider any material which would perform like the material here in question did perform last night, gasoline? A. No, sir.

Mr. Swacker: That is all.

Mr. Payne: No cross.

(Witness dismissed)

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Mr. Swacker: Dr. Garner or Dr. Schock here? They are making distillation tests.

The Court: I will let one for each side testify as to that. Is that all of this?

Mr. Swacker: Yes, sir.

The Court: Now, you can introduce the experts that went with the Pierce Arrow car, then you can introduce this other man to show the extent of his knowledge. The defendant's witnesses testified they made every test in trying to operate the car, every suggestion offered by the government man, let the jury see if you want to. You may proceed now. The record shows now the defendant closes with the reservation to introduce the chemist as to the distillation test.

Mr. Payne: That will be limited just to the distillation test.

Mr. Swacker: I think we are entitled to have Dr. Garner to testify to what he saw. There are ten witnesses—

The Court: Who is Dr. Garner?

Mr. Swacker: He went with Colonel Burrell.

The Court: If you want to introduce him—

Mr. Swacker: We cannot do it right now because he is out making the test.

The Court: Very well, I will let you call him, but you must watch him and keep him under the rule. Proceed.

Mr. Payne: Are you going to allow him to testify after we put on our witnesses?

The Court: He will just merely testify about the test, about the Packard car.

Mr. Payne: It will be merely cumulative. We don't dispute the test.

The Court: I will control that, now you proceed.

Mr. Payne: Call Mr. Moss.

Whereupon, ELISHA ARTHUR MOSS, a witness on behalf of the Government, was called in rebuttal and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Moss.

A. Elisha Arthur Moss.

Q. Where do you live? A. Jenks.

Q. What is your business?

A. Well, I am running the gasoline plant, operate a little production.

The Court: Whereabouts?

A. Jenks.

Q. What is the company you are with?

A. Brady, Swanson & Calley.

Q. Did you sell some gasoline to a party that came to your plant the night before last about half past nine?

A. I did not sell any.

Q. Did the Bureau Inspector and myself and Mr. Gann?

A. I did not sell any.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

The Court: The objection is overruled.

The Court: Well, did you furnish it to him?

A. Yes, sir.

The Court: When was that?

Mr. Payne: Night before last.

Q. What kind of gasoline was that?

The Court: Describe what the commodity was.

Q. Describe what the commodity was.

Mr. Swacker: Your honor understands this is no part of the test made jointly.

The Court: Very well. I am going to let this evidence in of this independent test, and I will let your evidence in of your independent test, stand before the jury.

A. It was just raw casinghead gas.

*By Mr. Payne.*

Q. Did you take the gravity of it? A. No, sir.

Q. Did you see it done? A. Yes.

Q. What was the gravity? A. I—

Mr. Swacker: We would like to have the privilege of cross examining the witness on the manner of producing before showing what was accomplished in the test. It is a different class of material—if it is a different class of material, we say it is irrelevant.

*By Mr. Payne.*

Q. Did you put that gasoline in the automobile?

A. Yes, sir.

Q. What make of automobile was it, did you notice?

A. I never noticed.

The Court: Hold on. I will let them have the privilege of laying the predicate for their objection.

Mr. Swacker: Mr. Moss, what character of plant did you operate? What character of casinghead plant did you operate?

A. High and low stage.

The Court: Compression or absorption plant?

A. Compression.

*By Mr. Swacker.*

Q. Did you have expanders on your plant? A. No, sir.

Q. Do you know what kind of plant the Gypsy has, whether that has expanders on it or not? A. I do not.

Mr. Swacker: We suggest there is no proper foundation laid to take this testimony in evidence.

The Court: I will permit it, with the understanding that you are to introduce what the difference is between compression plant with expanders and without expanders.

Mr. Payne: Allow me to do that?

The Court: Yes, if you don't do that, I will strike this evidence out. It was admitted yesterday that that didn't make any difference. I will permit it only on the understanding that evidence will be introduced to support that contention and if it is not, I will strike it out.

Mr. Swacker: Yes, sir. I think, of course, before additional evidence is offered, that should be established because it is a necessary predicate.

The Court: Very well, it is within the power of the court to regulate the evidence. If it is not connected up I will instruct the jury not to consider it.

Q. What did you state was the gravity of the gasoline? A. Eighty-five.

Q. Did you see the tank of the automobile drained of the gasoline it already had in it? A. I did.

Q. And you put the 85 gravity raw gasoline right into the tank? A. Yes, sir.

Q. And did you see them drive away in the car? A. I did.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Morris, did you examine the performance by the parties there handling that car to see whether they drained the car completely of the gasoline theretofore in it?

A. It was drained out of the tank in the rear.

Q. Well, do you know whether they drained out the reserve tank? A. I do not.

Q. Then you don't know but that the gasoline in the reserve tank is what propelled the car away, is that correct?

A. I do not.

Q. Do you know whether they drained the gasoline from the carburetor? A. I do not.

Q. Do you know whether they drained the gasoline from the carburetor? A. I don't know.

Q. Did you see them drain the gasoline from the carburetor or did you not? A. I did not see them do it.

Q. Do you know what an expander is, on a compression plant? A. No, sir.

Mr. Swacker: That is all.

Mr. Payne: That is all.

The Court: Stand aside.

(Witness dismissed)

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Mr. Payne: Call Mr. Dykeman.

(Whereupon, court took a recess for a few minutes.)

(Whereupon, court convened pursuant to recess taken, the same parties appearing as heretofore, the jury in the box, and the following proceedings were had, to-wit:)

Whereupon, R. E. DOWNING, a witness called for and on behalf of the Government, having been first duly sworn, under oath, according to law, took the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name and where you live.

A. R. E. Downing, 232 Santa Fe Avenue, Tulsa, Oklahoma.

Q. What is your business?

A. Casinghead gasoline business.

Q. How long have you been in that business, Mr. Downing? A. Eight years in Oklahoma.

Q. How long altogether? A. Ten years.

Q. What is the material, what product do you produce out there?

Mr. Swacker: I object; incompetent, irrelevant and

immaterial; no showing here that there is any connection with this witness and the transactions involved here.

The Court: Now, he asked how long he had been in the refinery business.

Mr. Payne: In the casinghead gasoline business.

The Court: Whereabouts have you been in business?

A. Kiefer, Oklahoma.

Mr. Payne: What is the name of the plant?

A. Crosby & Gillespie.

Q. Have you ever used casinghead gasoline in an automobile?

Mr. Swacker: We object, as being irrelevant, incompetent and immaterial, and no showing what character of casinghead—

The Court: He can show—

Mr. Payne: Show first he used it, and then what is the gravity.

Q. What kind of a plant do you operate?

Mr. Swacker: We will be here from now until next June, the government can call 20 to 30 witnesses to state they did, and we can call fifty or a hundred witnesses to state they did not, it is a collateral issue, and—

The Court: You brought it on yourself—

Mr. Swacker: Of this particular material—

The Court: Not of the material shipped, I permitted you to go and show by a witness that they tested a material and it was the character of the material of the Kiefer plant. That is the way I let the evidence in. They did not know of their own knowledge that it was the materials of the Kiefer plant, but they tested it as experts, and know the character of the material at Kiefer, and I permitted them to testify it was the same material.

Mr. Swacker: We connected it up by proving by the witnesses who furnished it to them.

The Court: You showed, though, it was subsequent to this date.

Mr. Swacker: We have also shown and it is undisputed that one plant will continue to produce the same character of material at a later date that it produced at a previous date, but it is a wholly different proposition.

The Court: I ruled on that; I will let them see what this is. You are manager of the Crosbie and Gillespie

plant. How long have you been manager of it? Let's get the predicate.

A. Seven years, ever since it was built.

Q. What kind of a plant is it? A. Compression.

The Court: Are you acquainted with the Gypsy plant there?

A. Yes, sir.

The Court: What difference, if any, is there in the make-up of the Crosby & Gillespie plant and the Gypsy plant at Kiefer?

A. Well, now, I couldn't say, I am not acquainted in that way that I can say. I have never been through the Gypsy plant.

The Court: Well, is your plant an absorption or compression plant?

A. Compression.

The Court: Go ahead.

Q. Are there expanders in your plant? A. Yes, sir.

Q. State, Mr. Downing, whether you have used the casing-head gasoline in an automobile?

Mr. Swacker: To which we object as incompetent.

The Court: From that plant. From that plant, from that Crosby & Gillespie plant, which is a compression plant? What does it compress?

A. Gas.

The Court: Casinghead gas?

A. Yes, sir.

The Court: And by compression, converts it into what is known as casinghead gasoline?

A. Yes, sir.

The Court: You use the expansion method?

A. Yes, sir, expansion for cooling.

The Court: This character of casinghead gasoline that you say you used in cars, where did you get it from?

Mr. Swacker: He hasn't said he used it yet. They asked him. You asked a question in which you implied that he said he had used it. He hasn't answered the question.

The Court: I think the record shows that. Did you use it in a car?

A. Yes, sir.

Mr. Swacker: To which we object.

The Court: I want to see the condition.

Mr. Swacker: Yes, but we want our exception.

The Court: I will give you a chance to make your objection and consider it made in time.

The Court: Go ahead, answer the question, you know how to lay the predicate.

Mr. Payne: That is what I have been trying to do.

Q. Did you use the gasoline from that plant?

The Court: I insist that is not—where did you get the gasoline, you say you used in the car?

A. From the Crosby and Gillespie plant.

The Court: When?

A. Ever since I built the plant for six years.

The Court: Go ahead.

Mr. Payne: That is all.

The Court: You mean you made it a practice of using casinghead gasoline to operate your car for that six years?

A. Yes, sir, may have sometimes bought some other gasoline when I was not there.

The Court: Did you use anything else besides this casinghead gasoline to run your car?

A. Yes, sir.

Mr. Swacker: We ask this evidence be stricken out as being irrelevant, incompetent and immaterial and not being shown it is the same character of material at all and the conditions are not shown, surrounding the manufacture, surrounding the particular material used by the witness.

The Court: I will let the record show that they shipped this very stuff—who does the evidence show they shipped it to.

Mr. Payne: The Texas Company at Port Arthur, at their plant.

The Court: Do you know the specific gravity, the range of the specific gravity of this commodity you are talking about here, do you know the maximum and the minimum of it?

A. I do not.

The Court: The way I get it from you is that you have run that plant for the past six years, and that plant

is used exclusively for abstracting casinghead gasoline from the gas by the compression method?

A. Yes, sir.

The Court: You did expand it and make it a practice to use that commodity in running your car?

A. Yes, sir.

The Court: Very well, I will let it stand over your objection and give you an exception.

Mr. Swacker: Yes.

The Court: I merely asked these questions to get the—

Mr. Swacker: We object now, with the development, it is specifically shown here it is not the same material he stated in response to the court he didn't know what the gravity was.

The Court: I admit he shows that practice during the year, and it is for the jury to say what the weight is, to say that during that time it is the highest or lowest gravity. I don't know whether this evidence on this test are admissible until it is unfolded and I hear the arguments on both sides as to the law. I haven't made up my mind as to its evidentiary weight.

Mr. Swacker: Give me an exception.

The Court: Yes.

Mr. Swacker: No cross.

*By Mr. Payne.*

Q. By what name did you call the product you produced?

Mr. Swacker: I object.

Mr. Diggs: We object.

The Court: Yes, I don't think that is competent, I don't think you are entitled to this.

Mr. Payne: Alright, that is all.

(Witness dismissed)

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Mr. Payne: Call Mr. Green.

Whereupon CLARENCE O. GREEN, a witness called for and on behalf of the Government, in rebuttal took the witness stand, after having been first duly sworn, upon oath, according to law, and testified as follows:

*Direct Examination of Clarence O. Green by Mr. Payne.*

Q. State your full name, Mr. Green?

A. Clarence O. Green.

Q. What is your business, Mr. Green?

A. Conductor on the Frisco.

Q. Mr. Green, have you ever secured any of the products any of the liquid from the loading rack of the Gypsy Oil Company at Kiefer?

Mr. Swacker: We object, incompetent, irrelevant and immaterial. The witness hasn't even qualified to know what the material is.

The Court: I will enter them for the purpose to show where he got it. I will see what you are driving at.

A. Yes, sir.

Mr. Payne: When was that, Mr. Green?

A. Latter part of the summer of 1917, I haven't the date.

Q. Under what circumstances did you—

The Court: Now, is the loading rack at Kiefer?

Mr. Payne: At Kiefer.

The Court: Gypsy Oil Company's loading rack at Kiefer?

Mr. Payne: Yes, sir.

The Court: What do you mean by loading rack?

A. Where cars are loaded. It is a pipe rack where they place a number of cars to be loaded from the pipe where the commodity is piped from the tank or plant.

The Court: Now, that is the Kiefer plant?

A. Kiefer plant.

Q. What do you do with that fluid?

Mr. Swacker: To which we object as incompetent, irrelevant and immaterial, no showing what fluid it was.

The Court: I believe the evidence shows that they shipped that commodity to north and south points, and this covers the period.

Mr. Swacker: The evidence also shows they received another commodity at those loading racks, being the north-bound naphtha. There would be no telling about the heavy naphtha.

The Court: This here is a loading rack.

Mr. Swacker: Yes, sir. Isn't that also the same place where inbound cars are received?

A. I believe so, yes, sir.

The Court: Well, now, when you were—when they were receiving, would they be unloading at the same place, you load by pumping, how do you load, how are the cars loaded?

Mr. Swacker: Not shown whether the witness knows.

The Court: I am asking him.

A. I would not be competent to say as to that.

The Court: I think you had better lay the predicate, show about the pumping rack, and the conditions of it, before this evidence would be competent.

Mr. Payne: I believe the answer to the question of what he did with it would show what it was.

The Court: I don't think so.

Q. Do you know, Mr. Green—

The Court: You have evidently got witnesses here that know how the plant was governed, and prove how it was loaded, and whether—where it was put there, and things like that, the circumstances—

The Payne: It seems so evident the inbound shipments would be pumped away—

The Court: Well, if that is self-evident, it can be proved. At least an effort ought to be made to get the best evidence. There are very few things that are automatic in this world in court.

Mr. Payne: If the witness is excused, I will lay the foundation.

The Court: Stand aside. Just wait on the outside there.

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Mr. Payne: Call Mr. Millard.

Whereupon MR. MILLARD was called to the witness stand for further examination and testified as follows:

*Further Direct Examination by Mr. Payne.*

Q. You have previously testified in this case have you not, Mr. Millard? A. Yes, sir.

Q. Do you know the nature of the material that Conductor Green got from your loading rack at Kiefer?

A. Either the product that we shipped as unrefined naphtha or else naphtha.

Q. Do you know which it was? A. I could not say.

Q. When a car of naphtha came in, wouldn't that be unloaded and sent to the tank? A. Yes, sir.

Q. So if you—

The Court: What was usually in the unloading, the loading station there?

Mr. Diggs: The loading rack, your Honor.

A. Nothing in the loading rack except what was left in the line from the previous products being loaded or unloaded; may have been either; it depends on what was the last operation.

Q. When an inbound shipment was pumped in, would there be any stuff left in the pipe?

A. Small amount left there generally.

The Court: When the loading station was filled for loading outbound shipments, how was it left? Would it be usually full, or what quantity would be there?

A. Previous to a certain date, it was always left full, and the people were found stealing gasoline from there, and after that always empty.

The Court: After that you kept them empty so there—so it was not available for the people to get?

A. Yes, sir.

The Court: Now, when the inbound or the intake, was it, you say that in pumping it away you only left what?—

A. What we couldn't get at.

The Court: What you couldn't get at?

A. Yes, sir.

Mr. Payne: What would that be?

A. Impossible to say.

The Court: How much approximately?

A. Maybe a dozen barrels or a dozen gallons.

The Court: Wouldn't be over a dozen barrels?

A. No.

Mr. Payne: Now, Mr. Millard, will you describe that loading rack and the pumps and the faucets on the rack?

A. Four inch line, laying above the ground, and about every 30 feet a two inch gate valves.

Q. Is there a faucet in the end of the rack?

A. Gate valve at the end of the rack.

Q. What was the nature of the commodity in those pipes, outbound, going south, or inbound?

A. Whichever being used.

The Court: Well, now those gate *valves*—how much

would have to be left there, what quantity would be available out of the gate valves?

A. I don't get the question.

The Court: Those valves—Well, now, don't they have to be a certain amount for a certain valve to take it?

A. No, sir.

The Court: Go ahead.

Q. How come Mr. Green to get this? A. He took it.

The Court: Did he take it with your knowledge?

A. No, sir.

The Court: How did you know, then, he got it?

A. Because I caught one of his men there one night in the act of stealing it, and when I went down to see him next morning about it, Mr. Green admitted he had been taking it himself.

Mr. Payne: Taking what?

A. The products out of the line.

The Court: What did you call it?

A. Called it casinghead gasoline.

The Court: You know now, as a matter of fact, what the product was you knew then whether they were taking the intake or the outgoing?

A. The man I caught had the outgoing gasoline in the can in the car. I had also caught other people stealing the same material.

The Court: He says he caught this man Green's man.

Mr. Payne: Is that a sufficient foundation?

The Court: What was that man's name you caught?

A. Griffin, I believe.

The Court: If he knows the kind of material Griffin got, you have it identified.

Q. Did Green get the same kind of material as Griffin?

A. I believe he did.

Mr. Payne: That is all. Recall Mr. Green.

Mr. Swacker: Just a minute.

#### *Cross Examination by Mr. Swacker.*

Q. There is shipped outbound from Kiefer a material called drip, is there not? A. Yes, sir.

Q. And how is that drip distinguished from the ordinary run of unrefined naphtha? A. By being a lower gravity.

Q. And how else it is distinguished?

A. Generally a little off color.

Q. Now, you have no way of telling, no idea as to whether or not the materials stolen by these gentlemen consisted of drip or a higher grade of unrefined naphtha?

A. The man I caught with the product in their possession had the higher grade of unrefined naphtha, casinghead gasoline.

Q. In that one instance?

A. In both instances.

Q. Can you give the date when this happened?

A. I could not—as a matter of court record, it is a matter of court record in Sapulpa.

Q. A matter of court record in Sapulpa? A. Yes, sir.

Mr. Payne: In reference to Griffith?

A. In reference to the other parties, a man named Griffith—Green—

Q. Were these people prosecuted?

Mr. Payne: What people?

Mr. Swacker: That you were speaking of.

Mr. Payne: Their names.

Q. Either Griffith or Green prosecuted? A. No, sir.

Q. You are referring to somebody else as a matter of court record? A. Yes, sir.

Q. Do you know what Green or Griffith got other than on the one occasion, when you saw, what was in the drip, whether it was a higher grade of naphtha?

The Court: He said on two occasions.

Q. Then on two occasions?

A. Yes, sir, I caught Griffith and one party and another party and both had the unrefined naphtha in their container.

Q. You only caught Griffith once? A. Yes, sir.

Q. Did you catch Green at all? A. No, sir.

The Court: Who was the other party?

A. A party named Bon Downton.

Q. Who was he?

A. He was a merchant at Sapulpa.

Q. And you don't know whether on any of the occasions when they may have taken any of this material, whether they took the drip or whether they took a higher grade of gravity of a higher unrefined naphtha or an inbound shipment of naphtha?

A. The only occasion I caught them in absolute possession, I actually know.

Mr. Swacker: That is all—No, just one more question.

Q. You are no longer employed by the Gypsy Oil Company and have no relation with them? A. No, sir.

*Further Direct Examination by Mr. Payne.*

Q. Mr. Millard, is it a fact that the drips was kept separate from the other stuff? A. Yes, sir.

Q. And was the drip sent down through the pipe into the loading rack? A. Yes, sir.

Q. You kept it separate? A. Yes, sir.

Q. In the pipe?

A. Not in the pipe, but in the cars and tanks.

Q. That is, you batched it down the material, sent down the batch of material separately to the car. A. Yes, sir.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: We would like to recall Mr. Green.

Whereupon, CLARENCE O. GREEN, the witness heretofore on the witness stand, was recalled for further examination by the government and testified as follows, to-wit:

*Direct Examination of Mr. Green by Mr. Payne.*

Q. Now, Mr. Green, what use did you make of the material that you secured from the Gypsy Oil Company rack at Keifer on the date you mentioned?

Mr. Swacker: I submit that it is incompetent, irrelevant and immaterial.

The Court: Do you know, Mr. Green.

A. Yes, sir.

The Court: Do you know the gasoline he got there?

A. No, sir.

The Court: Did he ever get any of you?

A. No, sir.

The Court: How many times did you get material there?

A. I think about three different times, I am sure, it was.

The Court: You know what it was you got?

A. Not technically, I used it as gasoline.

The Court: I don't think this witness is competent.

Mr. Payne: He said he used it as gasoline.

The Court: Can you use it as gasoline?

Mr. Payne: Yes.

The Court: Show that.

Mr. Payne: What was the color of the gasoline you got?

Mr. Swacker: I object to that witness, the witness is not qualified or competent to testify as to drips or the color of the higher grade naphtha or unrefined naphtha or anything else of color, it requires an expert to do that.

Mr. Payne: This drip is badly off color.

Mr. Swacker: It is a matter of very expert testimony to determine that and we know that.

The Court: I won't admit it under the present.

Mr. Payne: Can't we go into it roughly, whether it was a deep yellow, or water white?

The Court: If he knows, you will have to show he has had experience in colors of this kind in comparing them, you will have to qualify him.

Mr. Payne: Do you know Mr. Green, whether the gasoline you got was drip gasoline or not?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial and it is merely another means of trying to get around—

The Court: If he knows, I will permit him.

A. No, I don't.

Q. Do you know whether it was the same material as was shipped outbound by the Gypsy Company?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial, because it is shown that both were shipped.

The Court: If he knows whether it was the same material shipped to West Port Arthur or Port Arthur.

Mr. Diggs: All of it was shipped there.

The Court: This shows this drip was not.

Mr. Diggs: No, sir, I beg your honor's pardon, it shows it was shipped, but shipped in separate tanks.

The Court: I will exclude this evidence, I don't think the predicate is sufficiently laid.

Mr. Payne: That is all, Mr. Green.

(Witness dismissed)

And thereupon, W. P. DYKEMA, produced for and examined as a witness for and on behalf of the United States in rebuttal testified as follows:

*Direct Examination by Mr. Payne.*

Q. Have you been sworn? A. I have.

Q. State to the court and jury your full name, Mr. Dykema? A. William P. Dykema.

Q. What is your business, Mr. Dykema?

A. Consulting petroleum engineer.

Q. A little louder please?

The Court: Consulting petroleum engineer. I am a little hard of hearing in one ear, but I am about to reach the conclusion I am not. Go ahead.

Q. State what education you have had, Mr. Dykema?

A. I received the degree of Bachelor of Science in the engineering mining in the Michigan College of Mines, at Holton, Michigan, in 1905.

Q. What was the last? A. In the year 1905.

Q. Have you made a specialty of petroleum products, Mr. Dykema? Or any part of petroleum products—before answering that question, state what your experience has been generally?

The Court: Has he stated what degree he has?

A. I did.

The Court: What was it?

A. Bachelor of Science, Engineering of Mines.

The Court: Of what?

A. Michigan College of Mines, Holton, Michigan.

The Court: Degree by any other institution?

A. No, sir.

Q. What position have you held?

A. From 1905 until 1909 I followed mining engineering, and then for two years I did consulting work in the oil fields of California. Surveying and general engineering.

The Court: What two years?

A. '11 and '12—1910 and 1911.

The Court: Go ahead now.

*By Mr. Payne.*

Q. What further work have you done, Mr. Dykema?

A. From that period until August, 1914, I was again engaged in mining.

The Court: What character of mining?

A. Silver and copper mining.

The Court: What years?

A. Until 1914.

The Court: Go ahead. What since then?

A. After that, for a year, I was with the City Engineer's Office of Los Angeles; in August, 1915, I was employed by the United States Bureau of Mines, and was with them until the first of March this year.

The Court: And what business are you in now?

A. I have left the Government to do consulting work.

The Court: He asked you to state, during those years, what brought you into contact with the petroleum business, and in what respects.

A. During the period I was in California in the general engineering business and surveying and mechanical engineering, the installation of storage stills and concrete, survey of pipe lines and that general character of work; since coming to the government, I specialized, except the first three or four months, with casinghead gasoline work, natural gas gasoline work.

Q. How long have you—while with the Bureau of Mines, what particular division were you in there, and where?

A. I was in the petroleum division located at San Francisco and a little less than three years, and for two years, full years, at Bartlesville, with the experiment station there, the last year if which—

The Court: You mean the petroleum experimental station?

A. Petroleum station.

Q. What was your position in that station, Mr. Dykema?

A. For the first year, the petroleum engineer, and the last year superintendent.

Q. Superintendent of the experimental station of petroleum? A. The petroleum division.

Q. Of the Bureau of Mines at Bartlesville, Oklahoma?

A. Yes, sir.

Q. Have you made any special study of the subject of casinghead gasoline?

A. That has taken up practically all of my time since I have been with the government, except the administrative work necessary at the station.

Q. That is since 1915? A. Since 1915.

Q. Do you go or did you go to the various casinghead

gasoline fields and make experiments and examinations in those fields? A. Yes, sir, I did.

Q. What fields, Mr. Dykema?

A. The fields in Pennsylvania, West Virginia, California, Oklahoma and Louisiana.

Q. Were they all the casinghead gasoline fields in the country or are they the principal ones?

A. They are the principal ones.

Q. Mr. Dykema, what publications are you the author of?

A. I wrote bulletin 151 for the petroleum division bulletin 176, with a co-author, technical paper 232, another co-author, another paper which is not printed. It has no number.

Q. State the subjects or titles of those technical papers.

A. Technical bulletin 155 deals with compression and refrigeration of natural gas or extraction of gasoline.

Q. Go ahead.

A. 176 deals with absorption methods of extracting gasoline from natural gas, and paper 232 deals primarily with the extraction of gasoline from the residue gas from compression plants by the absorption process.

Q. Was there one more?

A. The later paper deals with latent heats of gases as applied to the absorption process.

Q. By whom were those publications published?

A. They were published by the government.

Q. By the government, the Bureau of Mines, Petroleum Division of the Department of the Interior, is that correct?

A. Yes, sir.

Q. And have those works been given wide circulation?

A. Of my own knowledge, I couldn't state. I have run across them in various places and I am informed five thousand copies have been distributed and the two bulletins are entirely exhausted; how many more may have been ordered by the Superintendent of Documents, I don't know.

Mr. Payne: Mr. Dykema, did you, in connection with a number of the Bureau of Explosive inspectors, and others, make a trip to Jenks night before last?

A. I did.

Q. Will you—

The Court: Do you know this man Moss who testified here you saw him—?

A. I saw him, sir.

The Court: Will you state what you want to do, Mr. Payne?

Mr. Payne: What occurred at Jenks?

Mr. Swacker: To which we object as incompetent, irrelevant and immaterial.

The Court: Well, if you get what place you are at, I will admit it. Jenks is a very indefinite proposition.

Q. State what occurred in the plant of the Brady, Swanson & Calley people.

The Court: If anything did occur.

Mr. Swacker: To which we object, incompetent, irrelevant and immaterial, having nothing to do with this defendant or the Gypsy Oil Company.

The Court: Overrule the objection.

Mr. Swacker: We except.

A. We went to the plant—

The Court: Is that the plant where Mr. Moss was?

A. Yes, sir.

The Court: Go ahead.

A. We drained our gasoline tank thoroughly.

The Court: What do you mean by thoroughly?

A. We drained the tank which connected, of all, as far as the carburetor, and as far as we could determine, there was no gasoline left.

The Court: Did you drain the reserve tank?

A. I don't know if there was a reserve tank on the car or not.

The Court: Did you look to see, did you clean the carburetor and clean that?

A. The carburetor drains back to the tank automatically if you open the bottom of the tank.

The Court: Did you examine to see?

A. We examined the tank and the gasoline did come out of the hole in the bottom of it.

Mr. Swacker: May I cross examine him on that?

The Court: Yes.

*By Mr. Swacker.*

Q. You say you understand; did you examine to see whether it was in fact drained or look at the carburetor at all?

A. We did not.

*By Mr. Payne.*

Q. To the best of your knowledge and belief, was the car entirely drained of the gasoline that was in it?

Mr. Swacker: I object, being irrelevant, incompetent and immaterial.

The Court: Yes, I sustain the objection.

Q. Go ahead and state what occurred.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

The Court: You will have to show there was no gasoline in the car or the carburetor was cleaned, before I will admit the evidence.

Mr. Payne: We can show even if there had been any in the car left, it would have been used up very quickly.

The Court: You must do that and lay the predicate before I admit the evidence.

Q. Mr. Dykema—

Mr. Payne: They presume something—

The Court: You can lay the hypothetical question, lay the predicate for the hypothetical question, prove your predicate. I have ruled and you must follow what the court says, and we will get through.

Q. State whether or not—what kind of a car was it?

A. It was a Packard car.

Q. State whether the running of a Packard car from Jenks to Tulsa would use up all of the gasoline which might have remained in the car had there been a reserve tank, and had there been any gasoline left in the carburetor?

Mr. Swacker: I object to that as incompetent.

The Court: I am going to let them prove this, but will state now, I don't think the weight of this evidence amounts to much.

Mr. Swacker: Your honor observed the witness says he don't know how much the reserve tank might contain.

The Court: If you are going to make a test, you must take all manner of precaution to make the test.

Q. State whether or not, in your opinion, that would use up all the gasoline. A. It would.

Mr. Swacker: We have an exception.

The Court: I will let the circumstance go to the jury.

Q. State what kind of gasoline was put into that car after it was drained of gasoline that was already in it.

Mr. Swacker: I object to that question, particularly

as to the form, because it is already testified by the witness that he don't know whether it was completely drained.

The Court: That is for the jury. What the attorney says don't make evidence. The jury understands what was done.

The Witness: Repeat the question, please.

Q. As to what kind of gasoline was put in the car after it was drained?

A. The product of the compression of natural gas.

Q. What was the gravity of it? A. It was 85 gravity.

Q. 85 gravity. Did you take the gravity of it at the plant?

A. I did.

Q. What was the vapor tension of that gasoline?

A. The vapor tension, as we determined it, was seventeen and one-half pounds.

Q. Seventeen and one-half pounds?

Mr. Swacker: I don't want to be insistent, but may it be considered that we have an objection to each question and answer, and the court overrules the objection and we save an exception.

Q. After you filled the car with this 85 gravity gasoline—did it start the motor?

A. It did start the motor repeatedly.

Q. Was there any trouble in starting the motor?

A. There was none.

Q. State how far the car ran on that gasoline?

A. It ran—

Q. Well, where did it run to?

A. Ran back to Tulsa, ten miles, I understand it is about twelve miles.

Q. Did the car stall at all on the way back? A. No, sir.

Q. Was there any trouble in the running of the car?

A. None that I could determine.

Q. Was the road hilly or level? A. Quite hilly.

Q. What was the condition of the road near the Brady, Swanson & Calley plant?

A. The road near the plant there was new and very sandy and rutted deeply.

Q. About what speed did the car make on the way back?

A. We made as high as 35 miles an hour.

Q. Was there any adjustment made on the carburetor? on the car?

A. None that couldn't be made on the dash.

Q. Who drove the car, Mr. Dykema?

A. I do not remember the driver's name, I believe Donnelly.

Q. Was it a hired car? A. Yes, sir.

Q. Where was it hired?

A. At a stand across from the Tulsa hotel.

Q. Had you ever seen the car, or the driver, before?

A. Not to the best of my knowledge.

Q. Had you ever been to the plant of Brady, Swanson & Kelly before? A. No, sir, had not.

Q. Had you ever met Mr. Moss before?

A. No, sir.

Q. What kind of gasoline did you ask him to give you?

A. Casinghead gasoline.

Q. Raw casinghead? A. Raw casinghead.

The Court: I understand you object to this?

Mr. Swacker: I object.

The Court: Very well. I exclude that, as to what he said to him, as hearsay.

Q. Mr. Dykema, will you describe what occurred on the test of last night?

A. Under the direction of the court, three representatives on each side in this case went to determine—

The Court: No, you just go and state, and tell what you did out there. I strike out all this preliminary reference. You state you went out to the plant, and then state what you did.

A. We drove out to the Gypsy plant near Jenks, in a Pierce Arrow car, being unable to obtain the services of a Packard car.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial, as to being unable to obtain a Packard car.

The Court: Yes, that is stricken from the record. The Pierce Arrow car is a standard car?

A. Yes, sir.

The Court: It is one in general use in the automobile world?

A. Yes, sir.

The Court: Go ahead.

A. We started to make a blend which it was agreed by both sides would be somewhere as nearly as practicable, as could be made, to the material which had been shipped from Jenks, before the crude oil blend?

The Court: Where was that?

A. Jenks.

Mr. Swacker: No blending at Jenks.

A. Before the crude oil blend.

Mr. Swacker: I understand you proceeded to make a mixture of natural raw casinghead?

A. We took the raw casinghead from the accumulator, but we asked the separator to blend it, to make for us as near as possible the same material which they had shipped before blending with crude oil was adopted.

Mr. Swacker: Not blended at the time?

A. I am speaking of the material we got—We filled a fifty-five gallon drum with this casinghead from the accumulators tank and with the assistance of a steam hose proceeded to blend it or rather to weather it. After heating it for about an hour the vapor tension and gravity test was made and it was agreed that it was weathered to a point which was as near as could be made to the gasoline which had been shipped from that plant. Each of the cars, the Packard in charge of Mr. Burrell and the Pierce Arrow were then drained by opening the bottom plugs of the tanks; both sides being agreed that it was properly *agreed* and would make a fair test. Then put five gallons of this weathered gasoline in each car. I rode in the Pierce car which started off without any difficulty at all and stalled at a point about seven miles beyond Jenks toward Kiefer. After relieving the pressure which was built up in the tanks and cooling the engine somewhat undoubtedly, we started on again and went to a point within 100 yards of the plant and by relieving the pressure again got the engine in such shape that it drove in.

Q. Drove into Kiefer?

A. Into the Gypsy plant about a mile out of Kiefer, I believe.

Mr. Payne: Was the *carbureator* on that car? Was it adjusted.

A. No change had been made whatsoever at the Jenks plant, between the times we tried the compression gasoline and the time we put the weathered product into the tanks.

Q. Mr. Dykema, in your opinion, would the car have run steadily on that gasoline, had the carburetor been adjusted?

A. It would.

Q. Go ahead and tell what occurred afterwards?

A. In the gasoline plant, the employes agreed to make for us as near as practicable—

The Court: Now is he talking about—which car are you talking about?

Mr. Swacker: The Pierce.

Mr. Payne: The Pierce Arrow.

The Court: Did or did not adjust the carburetor?

Mr. Payne: Did not.

The Court: Why didn't you adjust it?

A. Didn't think there was any particular use of adjusting the carburetor, we were practically confident the car would run on that gasoline.

Mr. Payne: Without that adjustment?

A. Yes, I have learned since that the radiator was entirely closed.

The Court: Why didn't you look to see?

Mr. Swacker: Wait a minute, we object to that and move that that answer be stricken, what he has since learned.

By the Court: Yes.

Mr. Payne: State what occurred at the Kiefer plant, you started to tell that.

A. We—rather the employes at the plant made a blend of the material which was coming from the compression process with naphtha blending about 30 per cent naphtha and 70 per cent gasoline mixture and this was then weathered down with steam the same manner as we weathered the gasoline at Jenks until it reached a vapor pressure which was similar to that for shipping. It was about nine and three-tenths and a gravity of about seventy-five Bohme. We then agreed that the cars were satisfactorily drained and satisfactory to both representatives.

Q. The other side agreed that the drain was satisfactory?

A. Satisfactory on both cars; perfectly satisfactory, we charged into the car into which I rode ten gallons approximately. We had no fine measuring apparatus, drove into Tulsa.

Q. In the car? A. Yes, sir.

Q. Did the car stop enroute?

A. We didn't make a single stop.

Q. Did you have any trouble with the engine or any other trouble whatsoever? A. No trouble whatsoever.

Q. State what time you left Kiefer and what time you arrived at Tulsa?

A. We left the Gypsy plant near Kiefer at 12:20 and arrived in Tulsa at 1:03.

Q. About how far is that? A. About 19 or 20 miles.

Q. About what speed did you make in the car, state the maximum speed you made? A. Thirty-five miles an hour.

Q. Mr. Dykema, state in your opinion whether a material

even lighter than the material you used last night would run an automobile? A. It would.

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

The Court: What was the question?

(Question read.)

By the Court: Material of what kind?

Mr. Payne: Of the kind that he used in the Pierce Arrow car last night.

The Court: I believe I will permit that. Their experts have testified as to what it wouldn't do and so on. The converse is true?

A. It would.

Q. How light would the material have to get before it would fail to run a car?

The Court: What material are you talking about?

Mr. Payne: The same material, gasoline.

The Court: The material that you had in that car?

Mr. Payne: Yes.

The Court: The commodity you had in that car?

Mr. Payne: The commodity you had in that car?

Mr. Swacker: I object as being irrelevant, incompetent, and immaterial, unless the proper foundation is made showing the witness has tried and demonstrated and found what point materials will not run the car.

The Court: He testified he is an expert and has had experience in casinghead gas and things like that, that is *prima facie* evidence, which would entitle him as an expert to testify, I will permit you to cross examine him, if you desire.

Mr. Swacker: I except.

The Court: I think the authorities hold the court determines whether a man is an expert.

Mr. Swacker: Yes, sir, but the question pre-supposes the knowledge which one could only have by ascertaining in a profession and it is not ascertained whether he attained that knowledge in a profession.

The Court: I will permit him to testify.

Q. Is as to whether material, even lighter than the material you used last night would run an automobile—

The Court: An ordinary automobile?

Q. An ordinary automobile, I mean, ordinary automobile and of the point of likeness—

The Court: Not a Ford—but I don't say that out of derision of a Ford—but a Buick or Dodge or Pierce Arrow.

Mr. Chambers: More Fords in use than any other car and probably use more gasoline than any other car.

The Court: I believe they testified yesterday, most anything would run a Ford.

Mr. Chambers: It makes it of commercial value then—

The Court: Well, when you determine the name, things like that and it is offered for the purpose that I think it should be conformed to the name of those that you have mentioned, take at least an average grade to determine it, I will confine it to Buicks, Dodges, and Pierce Arrows or Chandlers, cars of that character.

Q. Yes, any other standard than a Ford?

A. I believe any liquid made from natural gas by compression will run an automobile.

The Court: You mean of whatsoever gravity?

A. Yes, sir.

The Court: Why do you make that statement? On what basis do you make that statement?

A. I have ridden in cars using 105 gravity gasoline made by compression, a Dodge car that was, and experiments made and the data published concerning liquefied petroleum gas which was used, and the naphtha was most satisfactory, and I can see no reason why the lightest product, methane, would not be a good motor fuel.

*By Mr. Payne.*

Q. State in your opinion, whether the materials that you used in the automobile last night was gasoline or unrefined naphtha? A. It was gasoline.

Mr. Diggs: We object to that, and ask the answer be stricken, as not proper rebuttal. This, I don't believe, is proper rebuttal.

The Court: That is within the discretion of the court.

Mr. Diggs: Yes, sir. That is the way I understand that.

The Court: I will let that in. Let's proceed now.

*By Mr. Payne.*

Q. Mr. Dykema, will you state whether the compression of casinghead gas into gasoline is a refining process?

Mr. Swacker: I object, incompetent, irrelevant, and immaterial, the witness not having been qualified as a refiner.

The Court: I think he—

Mr. Diggs: Not proper rebuttal.

The Court: He testified he has experience as being the head of the United States Government Petroleum experimental station.

Mr. Swacker: He said that he was in the casinghead field. That doesn't import knowledge and experience—expert knowledge as to refining.

The Court: Well, this involves, this question leads, I take it, to the process of refining involved in the reduction of natural gas.

Mr. Diggs: I object to that if the court please, on the ground it is not proper rebuttal.

The Court: I will assume the discretion of the court and permit that, and I will let him answer the question.

Mr. Diggs: If I understand the court is going to permit this, I will not continue to object.

A. I would not consider it a process of refining.

The Court: Don't consider what as refining?

A. The extraction of gasoline from a natural gas by compression, as I understand.

The Court: You don't consider that a process of refining?

A. No, sir.

The Court: What do you call that?

A. Process of manufacture. You might call it a separation.

The Court: Manufacture of what?

A. Gasoline, casinghead gasoline or natural gas gasoline, we use that term, also.

Q. State whether the casinghead gasoline produced in that manner is a refined or unrefined product?

Mr. Swacker: Object to that on the same ground. He has not shown his qualification as a refiner.

The Court: I will permit him to answer the question.

A. A refined product.

The Court: Why do you say it is a refined product?

A. It needs no purification and it is used directly as it is made, without a change, in the majority of instances and great bulk.

The Court: When would it become refined?

A. It became refined when it leaves the oil bearing strata which is similar to a distillation.

The Court: You mean the oil-bearing strata in the earth?

A. Yes, sir.

The Court: And that is similar to a natural distillation by a natural geological process. Is that what you mean?

A. No, sir, the pressure is relieved on the oil and the gas comes up from the oil, and from the oil bearing strata and carries gasoline with it, carries the lighter hydro carbons which come from the oil, if a vacuum was put on it, a greater amount of this distillant will come up in the oil.

The Court: What would you call that process by which in bringing the natural gas to the earth and the same time with oil and at the same time separate it, what would you call that process?

A. It is merely the separation.

The Court: Then what refines it? You say now it is refined, before it is compressed, before it is brought, separated from the gas by compression; you say it is refined. How is it refined and what refines it? What is the process of refining it?

A. The process of evaporation.

The Court: Evaporation where?

A. In the earth.

The Court: Take gold, it is not pure, you talk about refining gold; now, naturally, that product—Go ahead, take the witness.

*By Mr. Payne.*

Q. State whether the product is one that requires any refining after it is in a liquid state. A. It does not.

The Court: Now, in order to get the issue into this, you got to show it is refined, it seems to me, before it—at least partially refined, before it complies—this word naphtha as we know it—because if it had not been properly refined, it would be unrefined, if it hadn't gone through

a refining process; you have got to subject this to the rule of reason.

Mr. Chambers: It might be a commodity that wouldn't have to be refined.

The Court: Can any of the—

Mr. Chambers: If it has nothing in it, there would be no necessity for it to be refined.

The Court: If there is no necessity to be refined—don't the word "un" mean without?

Mr. Payne: I will bring that out by the witness.

Q. State whether the word unrefined, as used in the petroleum business, refers to the state in which a particular oil is, or whether it refers to the condition of the oil.

Mr. Swacker: I object, incompetent, irrelevant and immaterial unless it be shown that there is a difference, some difference in the definition of the ordinary word than that in ordinary use, incident to the refining business, and that he is not qualified as a refiner.

Mr. Diggs: I further object on the ground that it is not proper rebuttal.

The Court: Very well, go ahead. I think that is within the discretion of the court. I will let it go in and you may have your objection to this evidence on the ground that it is not proper rebuttal.

Mr. Diggs: I was just going to suggest to the court that while it has been his discretion they have been allowed to go so far as to open up new avenues hereafter.

The Court: I will determine that. I sustain this objection. Of course, you can prove that for a specific industry, that a word has a technical or professional meaning for that industry, and of general use, that it is different from its ordinary use. The presumption is against that until it is established. I think that is the rule.

Q. Is the word unrefined, as used in the petroleum industry a word to indicate that some refining is necessary?

Mr. Swacker: Now, that is where my objection further goes, that he is not qualified as a refiner. It would certainly take some one in the refining business to give special definitions of words.

The Court: That is a matter not given as an expert, but that is a matter any witness can testify, as to how it is used.

Mr. Diggs: I object further, on the ground the question is leading and suggesting the answer to the witness.

The Court: I will overrule you on that.

Mr. Diggs: Exception.

Mr. Payne: State the answer.

The Court: Do you know, and how do you know, if the word unrefined in the petroleum industry has any special meaning, other than the ordinary meaning of the term? I will find out how he knows and whether he is qualified. I will know his reason for it.

A. Will you state the question again?

(Question read.)

A. I believe not.

Mr. Swacker: I object.

The Court: As an expert, I will let him testify as to the process, how it comes from the ground and if it is refined in the earth by nature, process you described that process and I can see how through geological agencies and by natures process of refining how it is made, but that is as far as I will let him go and that is on account of his technical knowledge of the particular subject, but his knowledge of the use of the terms of words, a man only gets that by contact in trade, in business and elbowing up with the world that deals with him, that is the way I understand the rule.

Q. Let's start right at the beginning and describe what process the gas goes through from the time it begins to come up to the earth, until a liquid form of gasoline in the plant, state what natural process of refining it goes through?

Mr. Swacker: I don't want to be captious, but the question should embrace, or answer should qualify, this is merely a theory, he can not get down into the earth.

The Court: A scientific theory, that is what that means.

Q. Go ahead.

The Court: The jury ultimately has to determine all these facts and they have the evidence of the specific facts and they have the benefit of reasoning of the experts but they at last have to exercise their reason to determine the facts.

A. From the gas that is used in a casinghead plant, gasoline—casinghead gasoline plant, that comes from the earth, it comes out on account of the natural pressure, commonly

called rock pressure and with the assistance of a vacuum pump which relieves the pressure on the surface and allows the gas to produce in a vacuum.

Q. Now, state whether or not that process is the same as the distillation of the crude oil in a still?

Mr. Swacker: I object as being irrelevant, incompetent and immaterial, on the ground he is not qualified as a refiner.

The Court: If he has had experience is it in his business in the application of the distillation process, to answer it I will let him answer it. He knows whether he knows that is from practical experience as an expert, as an expert have you seen crude oil distilled in refineries?

A. Yes, sir.

The Court: Very well, I'll let him answer. Go ahead.

Mr. Swacker: We object to what the witness states because that is a conclusion.

The Court: I think that is a comparative fact, I believe the court—

Mr. Swacker: I don't object—

The Court: Is it a—state the similarity of this and if there is any difference state what the difference is.

Mr. Swacker: I am perfectly willing to that, but not that this witness say that is the same.

The Court: You can state whether or not it is similar and if there is any deviation in the similarity state what that is.

Mr. Payne: Go ahead.

Mr. Swacker: I think the proper way should be to prove the process, and then it is obviously—

The Court: That is the practical way. The process—this man's process and how they both compare, how they are similar, and if any deviation, and that would be the better way, I think; obviously it would.

Mr. Payne: Take up the two processes, the making in the earth and the distillation of the product, and at a crude still?

A. In a crude still heat is applied to oil and as the temperature rises, the various liquids come off in the order of the boiling point.

Q. Of their lightness?

A. As they reach the boiling point. In the earth, the oil is under a pressure which raises the boiling point of these

various liquids, and after they are released and allowed to run in the oil—that is, the oil is allowed to run in a pipe line or tank, practically the same thing happens as the various boiling points are reached, they are distilled and come out of the crude oil, and this is the product that is collected in a compression plant.

Q. State whether, in your opinion, the evaporation or condensation, the vaporizing from the crude still when heat is applied, this crude oil will form a vapor that is similar to the vapors that come up out of a well? A. They are very similar.

Q. When the two vapors are condensed, is the liquid obtained from the two vapors about the same? A. Yes.

Q. Why?

A. In a gasoline plant, these vapors, in order to collect the vapors, the gases are compressed to bring them back to their natural state of liquid and cooled. In the still the gases are cooled first and part of them taken off, those whose boiling points are below the temperature of the coils are condensed to a large extent and then the bulk of the gas is usually treated further for the extraction of these condensable vapors.

Q. So that in your opinion is the casinghead gasoline a gasoline that has been refined in a similar manner to the gasoline produced by the distillation of the crude oil in a still?

Mr. Swacker: Now, he hasn't stated it was refined at all. He has simply stated the process.

The Court: Now, what do you say as to that process, natural process that you have defined, as to whether that amounts to a refining process or not? A. It does.

Mr. Swacker: We are not disputing that it amounts to or is analogous to a refining process, but the question implies that that made it completely refined. We say it only makes a partial refining.

The Court: I will let him, as an expert, testify whether or not that is refining for petroleum purposes, that is a matter of reason, just as you have your experts. They apply these facts to reason, and they state. Now, this witness can say that, but the jury apply the reasons finally to the facts, where there is a dispute, and they finally determine it.

Mr. Swacker: I don't think perhaps your honor got the ground of the objection. The objection is on the ground that the question implies that the witness had said that the material was already refined.

The Court: What do you say as to whether when the material has gone through the process, that when you

separate by compression, as to whether or not it is a finished, refined commodity?

A. My opinion is, that it is a refined product.

The Court: Finished through a process of refining, as a rule, now?

A. Yes, sir.

The Court: When you testify, you are testifying as to the general rule, because there is nearly always exceptions to all general rules. Go ahead.

Q. Mr. Dykema, will you state from what uses to which gasoline is put, besides the uses, the use in an automobile?

A. Gasoline is used for heating purposes, for lighting purposes, for cleaning purposes, in the—

Q. When you say for heating purposes, do you refer particularly to gasoline stoves?

A. Yes, sir, practically that. It is used in different ways for heating purposes, it is used for heating in assay's office, that is to make the melts.

Q. Did you mention that it is used as gas, gas for gas machine gasoline?

A. That is the method of use for both heating and lighting.

Q. Now, state the gravity, that is, of the gasoline that is generally used for some of these purposes?

A. These machines, this gas machine, gasoline is generally used considered a product of between 76 and 84 gravity. It might be even narrowed more, a little, from 80 to 84 gravity, naphtha, you don't want me to speak of naphtha?

Q. No, do not answer about it. How about the gasoline stoves?

A. Gasoline stoves operate on gasoline of 58 to 60.

Q. 58 to 68? A. And 68 at times.

Q. 68? A. 68 gravity.

Q. Would the fact that gasoline made by compression of the natural gas be too high a gravity for ordinary commercial use, would that fact make it something other than gasoline?

Mr. Swacker: I object to that as it would be a conclusion of the witness all together, I don't care whether he wants to say what he would call it.

The Court: Read the question.

Q. Would that fact, would the fact that gasoline made by compression of natural gas be too high a gravity for ordinary commercial use, would that fact make it something other than gasoline?

Mr. Swacker: That is asking, would gasoline be gasoline.

The Court: I permitted you to ask the witness whether gasoline was gasoline. Would that be gasoline?

A. Yes, sir.

Mr. Diggs: I have no objection if he asks him if it is in his opinion.

The Court: In your opinion as an expert.

A. Yes, sir.

Q. In your opinion, is it gasoline regardless of the gravity?

A. If made in a compression product, a compression plant.

Q. Yes, sir? A. It is.

Q. Is it not a fact that the product from the compression of natural gas is what is universally known as gasoline?

Mr. Swacker: I object to this as involving—he supposes that the witness has universal knowledge.

Mr. Payne: He has.

The Court: I will let him answer the question, whether it is commonly known, not universally known.

Mr. Swacker: I think he should be limited in it—

*By Mr. Payne.*

Q. Is it commonly known as gasoline?

The Court. You can bring out what he means by commonly known.

Mr. Swacker: Exception, please.

Q. Is that liquid commonly known as gasoline? A. It is.

Q. In the trade? A. Yes, sir.

Q. In the scientific world? A. Yes, sir.

Q. Have you ever heard it called unrefined naphtha prior to the beginning of this suit? A. I never have.

Q. Do you regard the name unrefined naphtha as an appropriate name for this product? A. I do not.

Q. Why not? A. It is misleading.

The Court: In what respect.

A. It is misleading in the respect that it would need further refining and further purification. +

Q. Is any further purification necessary?

A. It is not. I speak in the majority of cases. In our castinghead gasoline, for instance, there is lots of sulphur which must be refined out.

Q. Is that true of the Oklahoma gas?

A. Generally that is not true of the Oklahoma gas.

The Court: Now, you covered the question did not

need further purification. Why do you say it does not need further refining?

A. It is fit for use as it is. It is marketable as it is.

The Court: What do you call the process, then, of blending?

A. I call it blending. It is mixing.

The Court: You mean to say, then, that that is not one of the arts of refining.

A. I would say so. There is no purification. It is never referred to as refining process. Most of them refer to it as blending and at times mixing.

The Court: You mean it is never referred to by scientific writers who are experts in that field?

A. Never; it takes in too much territory; but usually, and very generally, it is referred to as blending or mixing in the literature, and more generally still, by the operators.

The Court: Well, do the scientists say that it is not refining where it is discussed by them?

A. I don't remember of hearing a discussion on the point.

The Court: Well, now you say, then, it is ordinarily by the scientists, authors, referred to as blending and mixing?

A. Yes, sir.

The Court: And not as an art of refining. Now, do those who refine them, if you know, in the practical application in the erection of plants, how do they regard it?

A. I am not clear on the question.

The Court: Well, now you have—

A. You mean refineries or compression plants?

The Court: Well, compression plants, are, usually a company or a refinery, an adjunct to it?

A. No, sir.

The Court: You say they are not?

A. No, sir.

The Court: Where are compression plants usually located?

A. Located near the oil wells, near the gas wells.

The Court: You say a compression plant, as a rule, is not a part of the specifications for a refinery?

A. Compression plants are being used to treat, the still vapors in the refinery, but I don't believe the average refinery

in the country, or the majority, I will say, of the refineries in the country do use that process today. It is an advance step. It is a matter of great efficiency by reducing the loss in the refinery.

The Court: You mean that applied, is a process of conservation, when you apply the word efficiency, you mean this a process of more conservation and economy and not scientific, not a scientific process of refining, to make a designated commodity?

A. It is a matter of economy—I can explain that.

The Court: Well, it is twelve o'clock now. Court will take a recess until 1:30. The audience will keep their seats and the jurors will go out under the instructions of the court heretofore given you, and the admonitions heretofore stated. The jury will pass out and the audience will keep their seats.

(Whereupon, the jurors retired from the court room.)

Whereupon, court took a recess until 1:30 o'clock p. m. this afternoon.

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**AFTERNOON SESSION.**

April 21, 1920; 1:30 P. M.

Whereupon, court having met, pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and counsel for the defendant announcing to the court they were ready to proceed with the further trial of this cause, the following, further proceedings were had, to-wit:

Mr. Payne: It just struck me that if the other side had the distillation tests ready that they could put their witnesses on and then we could put ours on.

The Court: Do you want to use this witness?

(The witness, W. P. Dykema, is on the stand)

Mr. Swacker: Do you suggest we put on our defense as to distillation tests.

The Court: Both of them.

Mr. Swacker: We would be glad to put on our witnesses on the distillation tests.

The Court: Very well.

(Witness excused.)

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Mr. Payne: I will continue with this witness after this is all through.

Whereupon, Dr. J. B. GARNER, a witness heretofore on the witness stand was recalled for further direct examination by the defense and testified as follows, *to-wit*:

*Direct Examination of J. B. Garner by Mr. Swacker.*

Q. Dr. Garner, you testified previously did you?

A. Yes, sir.

Q. Did you accompany the party to the experiment last night with the material from Jenks and Kiefer?

A. Yes, sir, accompanied Mr. Dykema, Mr. Teague, Dr. Bacon, and Dr. Burrell.

Q. And have you made distillation tests of the material used for these tests? A. Yes, sir.

Q. Will you state the distillation tests, did you make it fractional? A. Yes, sir.

Q. To what fractions did you take it?

A. To 5 and 10 degrees temperature, intervals.

Q. Well, will you state the distillation tests you found upon the material used at Jenks?

A. Your honor, it will be necessary for me to refer to my notes in this connection.

The Court: Made at the time?

A. Yes, sir.

The Court: Very well.

A. Made at the time.

Q. Have you plotted them on a curve?

A. Yes, sir, I have.

Mr. Swacker: Perhaps that will enable a better presentation of them than merely stating the figures. Will you mark that please?

(Thereupon, the papers referred to by counsel was marked for identification, Defendant's Exhibit 149.)

A. Your honor, one was the Jenks product and the other the Kiefer product.

Q. I will show you a paper marked Defendant's Exhibit 149, and ask you if that shows the distillation curves of the materials taken from Jenks and Kiefer?

A. The curves shown on Defendant's Exhibit 149, labeled "Sample from Jenks," is the sample obtained from the Jenks gasoline plant of the Gypsy Oil Company.

Q. And the one marked—

A. The one marked sample from Kiefer was obtained from the Kiefer gasoline plant.

Mr. Swacker: I offer that in evidence.

The Court: Let the record show it is offered in evidence and is admitted and considered read.

Q. This shows the percentage of the material distilling at the temperature indicating the per cent of material being shown vertically at the left hand edge of the paper, and the temperature along the bottom, is that correct?

A. That is correct.

Q. And these are the same materials used in the test last night? A. Identical material.

Q. Mr. Garner, have you made many tests in your profession of materials of this character to ascertain by their curvatures whether or not they are gasoline or whether usable as a commercial gasoline? A. I have.

Q. How many such?

A. It would be difficult to state the exact number.

Q. Thousands or hundreds, or what?

A. I suppose under my direction—a hundred or more tests have been made.

Q. A hundred or more tests? A. Yes, sir.

Q. Have those distillation tests been coupled with performance tests, to ascertain whether or not they would operate?

A. In many of the cases, yes, sir.

Q. You say—

The Court: How many of that hundred?

A. I can't recall exactly.

Q. About ten?

A. Ten or more. I don't know whether 10, or 12, or 13, or 20.

*By Mr. Swacker.*

Q. Would there be some of the tests that it would be obvious from previous tests that the curve would indicate it would not be a practical material for gasoline?

A. Repeat the question.

Q. Would there be some of the tests that it would be obvious from the previous tests, that the curve would indicate that it would not be feasible material for ordinary use as gasoline?

Mr. Payne: We object.

The Court: On what ground?

Mr. Payne: On the ground, as I understand it, merely the distillation test here goes in.

Mr. Swacker: I think we have a right to show what the distillation tests would indicate.

The Court: I permit it for this reason, I have seri-

ous doubt as to whether or not you should not have introduced your expert evidence in chief. I resolve that doubt in your favor.

Mr. Swacker: Now, will you answer, Mr. Garner?

The Witness: Will you repeat the question?

Q. You said you had made at least one hundred distillation tests and coupled with those distillation tests in at least ten instances you made performance tests?

A. Yes, sir.

Q. Now, my question is—

The Court: The right question is, why didn't you make performance tests of all?

A. Your honor, I have made performance tests in all of them.

Q. Now, then, as the result of such experiment, can you say whether or not the curve indicated by the distillation test in this Exhibit 149 is a suitable article for commercial gasoline for ordinary purposes, under ordinary conditions?

A. In answering this question, it must be very clearly understood that there is a vague, indefinite region wherein it is difficult, almost absolutely impossible, to tell whether a thing would be a commercial gasoline or would not be, until the actual performance test had been made; but there are certain well defined regions *there are certain well defined regions outside of this indefinite and vague regions which a person can state would in general not be a gasoline or would be a gasoline.*

Q. Well, now, take that region—

The Court: I don't think that is the issue in this case, whether it is a commercial gasoline. The way I understand it is whether it is more appropriately called gasoline than unrefined naphtha.

Mr. Swacker: That is our own acceptance of it also.

The Court: And that is my present intention to so charge the jury, whether in all things, taking all in all and the view of nomenclature, is that the appropriate name for it or this the appropriate name?

Mr. Swacker: I will ask him this question direct.

Q. Will you say whether those curves indicate to you whether the name unrefined naphtha or the name gasoline—which name, unrefined naphtha or gasoline is more appropriately applicable to the material.

Mr. Payne: I object to that, the witness has already testified to that.

The Court: He already has testified to that, that is duplications. He testified to that, that is my recollection

when he was on the witness stand before. That is just rehashing the same evidence.

Mr. Swacker: He has the, as the result of this identical material—

The Court: I will permit you to ask him if he sees any reason why he should change his opinion from his former evidence.

Q. Will you answer that Dr. Garner?

The Court: Since you have made that test?

A. I see no reason whatever for changing my previous answer.

Q. You are still of the opinion it is unrefined naphtha?

A. Yes, it is not gasoline.

Mr. Swacker: That is all.

The Court: I want to ask him a question.

Mr. Swacker: Alright.

The Court: Now what is this product that is taken from the gas by compression, what is the general name that it is known by?

A. The general name is casinghead gasoline or casinghead gas.

The Court: Now, you say, either casinghead gas or casinghead gasoline, one or the other?

A. Yes, sir.

The Court: Now, if you go and take two parts of the casinghead gasoline or casinghead gas and one part of the crude naphtha, then which dominates, which is the major portion of that blended commodity, casinghead gasoline, or crude naphtha?

A. The one you would sell to the public?

The Court: No, I am talking about this commodity you have got there?

A. I would call that an unfinished product.

The Court: Which dominates, which is the major portion?

A. The casinghead gas.

The Court: The casinghead gas?

A. Yes, sir.

The Court: Why did you call the given, that--why did you call and give the name, carrying the naphtha name rather than the casinghead gasoline when it takes the majority portion of the other product?

A. I don't believe I understand the question.

Q. Assuming that the blended commodity has one part of the crude naphtha and two parts of the other, I believe that is about the proportion to show; then you put it together, why in the nomenclature do you carry the naphtha name rather than the casinghead gasoline name?

A. I don't know, sir.

Q. The reason for it?

A. It would be a blended material, but I don't know any one who could predict what that material would be until they had made certain tests of that material, and it might be a blend or it might be a mixture, and it might have perfect contiguous property and it might have intermediate or irregular property, and it could be blended gasoline or not gasoline or something else, depending upon the material originally mixed or originally blended together.

The Court: That is all. The reason I asked this was for the derivation. That was suggested to me. I don't intend to say that those names are right, only that is the process that occurred in my mind.

A. If I might be permitted, your honor, I could give you a concrete illustration of that.

The Court: Very well.

A. We obtained a sample of raw casinghead gasoline from the Jenks gasoline plant at the Gypsy Oil Company last night. It failed to comply either with the chemical or usable test of gasoline. Our car went dead on us. There was no adjustment which you could subject that car to which would make it go. We were in front of the gasoline plant of the Tidal Oil Company, somewhere between Jenks and Kiefer, and we had no motor fuel to get along with. We were out in the dark, and we suggested that some one go over to this gasoline plant, to see if we could get some naphtha. They had no naphtha, but they had some drips, which was a very heavy material, which I tested in this way. I put it on my hands and I couldn't get it to dry off at all, it was greasy, seemed to have some kerosene or some heavier stuff in it. We had four inches approximately of material in the reserve side of the tank of this Packard car. We put in very conservatively estimated amounting to a gallon and a half of this material called drip, and we shook the car up, and then the car would not budge. We then sent back for more material of the same kind to see if we could thin the stuff out and make a gasoline out of it, and we put another quantity of approximately a gallon and a half into this same tank, and still the car wouldn't budge. Now, that thing was a mixture, it had a lot of heavy ends in it, and it wasn't gasoline. It was an unfinished, unrefined product.

The Court: But why do you call this compression

commodity that comes from the gas, casinghead gasoline, why is the reason—there is always a reason for everything you name—it occurred to me the derivation, of a human name—

A. It is called casinghead, of course.

The Court: You trace back the derivation of the human name, and there is always a reason, a reason for everything you see. Now, what is the reason for calling that casinghead gasoline? What derivative is that from?

A. I can see a number of reasons, I don't know definitely how this name gasoline ever became associated, I know the derivation of the word gasoline, but I would assume, from my knowledge of the literature on the subject, a part of the name casinghead was given to this commodity because it was derived from the casinghead of an oil well, and would also assume, without any definite knowledge on the subject, because I find no definite statements anywhere, that it was called gasoline because it could be made into gasoline.

The Court: Proceed with the further examination of the witness.

*Further Direct Examination by Mr. Swacker.*

Q. Doctor, did you get a computation of the mileage of the material on these tests last night?

A. As far as I could get such information, yes, sir.

Q. What did it show?

Mr. Payne: I object, on the ground that the railroad tariff, in naming the rate on gasoline, unqualifiedly and unmodifiedly does not limit the gasoline rate to an ideal or economic gasoline; the tariff says gasoline.

The Court: I think that is it.

Mr. Swacker: We think that is a matter of argument, that we would like to argue at the proper time. For instance, you might just as well contend the rate on silver embraces quicksilver, and the rate on glass embraces the rate on isinglass; if it is a different thing, it certainly does not embrace a foreign thing. That is, a compound name.

The Court: What is the question?

Mr. Swacker: I am asking him what the mileage test was last night. It has nothing to do with what we are arguing.

The Court: I will let that go in.

A. Your honor, it would be necessary to refer to my notes.

The Court: Very well. If there is that for the ex-

perience about casinghead gasoline being used in cars, and how well it will work on this evidence will be of the same character and make it competent. I will let that in. I will adopt a rule on it. You may answer that.

A. A full five gallon- of gasoline, such as is contained in the source of contention in this case was put into the thoroughly drained tanks of the Packard car.

The Court: Now, you can answer that without going over all of that.

*By Mr. Swacker.*

Q. Can you tell in gallons per mile?

A. Approximately four miles per gallon.

Q. That is all.

The Court: A gallon four miles?

A. One gallon carries a car four miles, approximately.

*By Mr. Sawcker.*

Q. Now, can you say what a Packard car of the character in use, ordinarily makes with gasoline?

A. From eight to nine and a half or ten miles.

Q. That is all.

*Cross Examination by Mr. Payne.*

Q. Now, is it not a fact that the gasoline of the gravity from 80 to 90 is used in gas machines?

A. I have no knowledge of such a material.

Q. You never heard of that?

A. 80 to 90 material, no, sir.

Q. Now, on what ground do you say that a gasoline of this limit, the product, liquid, from casinghead gasoline plants that has a gravity from 80 to 90 is not gasoline?

A. Well, there are a number of elements that personally I consider are prerequisites to any approximate definition of gasoline, and I can answer your question best by stating that conception. I have never seen any of the gasoline you have described. I have never heard of it.

Q. Now, let me ask you this question: isn't there other uses for gasoline than in a motor car?

A. I presume there are many other uses.

Q. Now, all these other uses—gasoline of different gravities?

A. The gravities are no measure of quality of the material.

Q. Well, different volatilities, then?

A. Within certain ranges.

Q. Now, is it a fact that a fluid that won't satisfactorily, we will say, run a motor car, would that necessarily prove that it was not gasoline? A. It would, sir.

Q. On what theory? You admit that there are other uses for gasoline?

A. Not on the basis of a theory, on the basis of usage and economy.

Q. I will ask you to state the initial and end boiling points of those tests?

A. On the Jenks material, the initial boiling point was 77 degrees Fahrenheit. The dry point 326 degrees Fahrenheit. On the Kiefer material, the initial boiling point was 79 degrees Fahrenheit, and the dry point was 481 degrees Fahrenheit.

Q. Now, would you say that liquid will not run an automobile? A. It did not run an automobile.

Q. Did it not run the Pierce Arrow all the way from Kiefer into Tulsa?

A. I was not in the Pierce Arrow car and have no information.

Q. Was it in your sight?

A. No, sir, it was not in our sight.

The Court: If it does, what would you say?

A. I would say that it would not necessarily make it gasoline, for the reason a Pierce Arrow car is a very exclusive car, it is not a car that represents any very considerable portion of the great percentage of the cars, that is the first one, it is not a car in common usage.

Q. It is not?

A. It is not a car in common usage. It is used by people who are very wealthy. In the second place, it is a car that is nearly mechanically as correct as a car can be built. It has—

The Court: Suppose now, this would run a Ford?

A. I would say then, your honor, it would be gasoline.

Q. Now, is it a fact you can run a Ford on less desirable stuff than you can on most any other automobile?

A. It is not so.

Q. Was it not testified to here this morning?

A. I was not in court here this morning.

The Court: Yesterday morning.

Mr. Payne: That is all.

*Further Direct Examination by Mr. Swacker.*

Q. Have you known, doctor, material that was not gasoline at all, such as crude oil or kerosene, to be capable of running a car?

A. I have known some crude oil to run a car.

Q. Would you say actually run a car? A. Yes, sir.

Q. Did it run as well or better than this?

A. It run it as well as any gasoline I ever saw.

Q. Then the fact this is not--this might run a car does not make it gasoline?

A. Not necessarily; the usage always determines the use of the commodity.

Q. Now, this Pierce Arrow car is an extremely powerful car? A. Assumed to be.

Q. And what mileage ought that to have been capable of making last night, what speed?

A. I am unable to tell you.

Q. Say sixty or seventy miles per hour?

Mr. Payne: I object. He already stated he did not see the car.

Q. You don't know whether that car may have been especially adjusted so far as the carburetor is concerned expressly so it would be capable of handling this material?

Mr. Payne: I object.

The Court: If he did not see it, it is asking him a negative.

Mr. Swacker: It is the question asked him, a hypothetical question asked him what it would do.

The Court: I asked him about a Ford.

Mr. Swacker: You also asked him if the Ford would run, would it be gasoline.

The Court: He says no.

Mr. Swacker: Suppose it would run it, then would it be gasoline?

The Court: He didn't say that.

Mr. Swacker: Not necessarily, would have to know something about the car, I am showing one of the elements about the car.

The Court: I don't think that is competent.

Mr. Payne: Just one more question.

Q. Under your theory, crude oil is gasoline?

The Court: No, no, that is a matter of argument.

Mr. Swacker: That is a conclusion.

The Court: That is a matter of argument.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness excused.)

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Whereupon, W. P. DYKEMA, a witness heretofore on the witness stand was recalled by the government for further direct examination and testified as follows, to-wit:

*Direct Examination of W. P. Dykema by Mr. Payne.*

Q. Have you ever visited the plant of the Gypsy Oil Company at Kiefer, Mr. Dykema? A. I have.

Q. When was that? A. In September, 1916.

Q. Were you with the bureau of mines at that time? A. I was with the bureau at that time.

Q. Did you go there to make an inspection in the course of your regular duties? A. I did.

Q. How long were you there in the plant, Mr. Dykema? A. The better part of a day.

Q. Did you go over the plant thoroughly? A. I did.

Q. Did you see the product that they there produced? A. I did.

Q. What was that product?

Mr. Swacker: I object to that question, not showing any proper qualifications, he certainly can't tell by looking at it what it is.

The Court: Well, did he examine it; did he make a chemical test, or physical test, what test did he make?

Q. How would you tell whether it was gasoline or not, Mr. Dykema? A. By its odor and its volatility.

Q. And could you tell from the manner in which it was produced? A. Yes.

Q. What was the product? A. Casinghead gasoline.

Q. What did it look like, Mr. Dykema?

A. It was a water white liquid.

Q. Just what kind of water, just what do you mean when you say water white?

A. Well, it could be compared to distilled water.

Q. Clear, transparent liquid? A. Colorless liquid.

Q. Was it unrefined naphtha? A. It was not.

Q. Mr. Dykema, what is meant by recovery in the distillation test?

A. The recovery in the distillation test is the quantity of the distilled liquid which is condensed and collected.

*Mr. Payne.*

Q. Is it a fact, that in the distillation test you take a quantity of fluid and by heating it it vaporizes and later condenses and goes over into another receptacle in the end of the test?

A. It is.

Q. Assuming that your subject contains the distillation test of a quantity of casinghead gasoline and the recovery you would say was 90 per cent, what would that 90 per cent be?

A. Be gasoline.

Q. Now, Mr. Dykema, would the fact that the products of the Kiefer plant of the Gypsy Oil Company failed to meet certain specifications of the customers of the Gulf Refining Company, show that the product was not gasoline?

A. It would not.

Q. What is that quality of gasoline which gives it starting qualities?

A. It is the quality of having contained among the hydro carbons present, those which volatilize easily or at a moderate temperature.

Q. Isn't it a fact that if a gasoline has a lower boiling point than you have a gasoline that will easily start an automobile? A. It is.

Q. What is refined, Mr. Dykema?

Mr. Swacker: Object, it is not shown he is qualified as a refiner.

The Court: Let's lay the predicate, show his knowledge.

Q. What experience, what training have you had in refining, Mr. Dykema?

The Court: How has your experience in the petroleum business brought you in contact with the refining, so the court can determine the knowledge you have of that, that is the thing I have to pass on, whether or not it is competent.

Mr. Payne: May I make a suggestion, we are dealing with casinghead gasoline, he has had long years' experience in dealing with casinghead gasoline, I will change the question.

The Court: You asked a broad question.

Q. Would the blending of casinghead gasoline with naphtha be considered the refining of the casinghead gasoline?

A. It would not.

Q. Why not?

A. It removes no impurities from the casinghead gasoline.

Q. Would it be finishing?

A. I believe it would be termed a finishing process.

Q. From what standpoint would it be considered a finishing?

A. To be considered a finishing from the standpoint of working to a certain specification, to produce a certain product, when the two had been blended, your product would be finished provided it met certain qualities, certain conditions.

Q. Is it the general practice to blend casinghead gasoline with naphtha? A. It is.

Q. What is the purpose of that blend or mixing?

A. It has two purposes, one of which it to make it less volatile for handling, and the other is to conserve the product.

Q. Conserve the product. How does it conserve the product? A. It reduces the evaporation loss in handling.

Q. Does it tend generally to conserve anything else, specifically does it enable a refinery to make use of low grade naphtha?

Mr. Swacker: The witness has still not been qualified on refining.

Mr. Payne: This is on casinghead gas.

The Court: Read the question.

(Question read.)

The Court: I will sustain the objection to that, unless you show he has either an intimate or relative knowledge of the details of a refinery as to conservation and the economizing of the product.

Mr. Payne: Your honor, I might suggest that casinghead gasoline producers generally use naphtha in blending. Now, I just want to bring out the self-evident fact that they make a use of that naphtha producing a greater volume of gasoline of the quality desired.

Mr. Swacker: We will admit that is a fact.

The Court: Every witness on the stand testified that is true.

Mr. Swacker: We not only admit it, but we insist it is a fact.

*By Mr. Payne.*

Q. Is blending of the casinghead gasoline with naphtha usually done at the casinghead gasoline plant?

A. Most usually.

Q. Is it frequently marketed direct? A. It is.

The Court: Direct from the casinghead plant?

A. (No answer)

Q. Could the casinghead gasoline be marketed without being blended? A. It could.

The Court: For what purpose?

A. Buyers use that in blending with naphtha, making it their business, the blenders.

The Court: Purchasers that are not in the refining business as a business?

A. Yes, sir.

The Court: Not the dealers, they do not generally sell the product that way?

A. They sell to retailers, they deliver it to retailers, as far as I know.

The Court: Men that are not supposed to be jobbers?

A. Yes, sir.

The Court: Where do you know of that being done?

A. Berry Brothers, Sistersville.

The Court: Whereabouts?

A. West Virginia.

The Court: Are they in the refining business?

A. Were not when I was in their plant.

Mr. Swacker: We object, as being irrelevant, incompetent and immaterial, and not shown to be the same product.

The Court: Very well. I will strike it out.

Q. Could the casinghead gasoline be marketed without blending? A. It can.

Mr. Swacker: I object to the answer, and ask it be stricken, being irrelevant, incompetent and immaterial. Could it be—that is merely a prophecy.

A. It is.

The Court: You asked him if he knows of his own knowledge on the subject, if it is marketable, and in what way; that is testifying to a fact. I will permit him to do that. Now, you can testify what it is capable of being used for and the jury can pass on the question of whether or not it is marketable.

Q. In your opinion, Mr. Dykema, is it necessary to blend the casinghead gasoline before being marketed?

A. It is not.

Q. In your opinion, would the blending of the casinghead

gasoline with naphtha, be the refining of the casinghead gasoline? A. It would not.

Q. Would it be merely the mixing of one fluid with another? A. It would.

Q. Have you read any publications on the subject of casinghead gasoline? A. I have.

Q. Have you ever seen casinghead gasoline called by the name of unrefined naphtha in any of the technical works that you have read? A. I have not.

Q. Is unrefined naphtha a name known in the scientific world as describing casinghead gasoline?

Mr. Swacker: I object to that question, as incompetent, irrelevant and immaterial. He may limit it to his knowledge, but not to the world's knowledge.

The Court: What was the question?

(Question read.)

The Court: I will restrict it to his knowledge and information gathered from scientific books; I will permit it that far; then on cross examination you can find out the book. That puts it within a degree of certainty. I will permit him to answer it with that restriction.

Q. Will you answer the question with the restriction?

A. Will you state the question again, please?

Q. As to whether unrefined naphtha is known to the scientific world as casinghead gasoline, or rather, the reverse, is casinghead gasoline known or called unrefined naphtha in the scientific world, so far as the books and publications you have read? A. It is not.

Q. While you were with the Bureau of Mines, I believe you stated that you made visits to every casinghead gasoline field in the country? A. Practically so.

Q. Did you ever hear this product called unrefined naphtha? A. I never did.

Q. That is all—just a minute.

*Cross Examination by Mr. Swacker.*

Q. I believe that you said you have read a good deal of literature on the subject of casinghead, I will ask you to state if the title of all the works you are familiar on that subject, do not use the phrase casinghead, as a part of the name "casinghead gasoline"? A. They do.

Q. You refer to bulletin 151, of which you say you were the author in the Bureau of Mines, and I will ask you if that is it.

(The attorney exhibits Bulletin 151 to the witness.)

A. It is.

Mr. Swacker: I would like to read the witness four or five pages from this book as a predicate for subsequent questions to be propounded.

The Court: Very well.

*By Mr. Swacker.*

Q. Will you say if you made the following statement? I am going to read from this paper. A. I don't understand.

The Court: He is going to read this to lay a predicate.

Mr. Swacker: I am asking you about the material I am about to read.

(Whereupon, counsel reads from Bulletin 151 the following excerpts): "Blending and shipping the condensate.

"Although blending of compression-plant condensates is not done primarily for the purpose of making a product that will meet the specifications required by transportation laws governing the shipment of gasoline by rail or water, blending and shipping have become such important functions, one or the other, that a separate discussion of the blending process and the transportation of the blended stock is not desirable.

#### "REASONS FOR BLENDING.

"When the condensate produced by compression is allowed to weather unblended until its vapor tension is reduced to less than ten pounds at 100 degrees Fahrenheit and the temperature arises to atmospheric, losses ranging up to seventy-five per cent of the total product often result, whereas if the condensate is mixed (blended) with heavier grade still-run refinery distillates, the losses from weathering are reduced, usually to one-half that amount, and often more. This fact has led condensate producers to take advantage of blending to increase the volume of the products actually marketed, thus increasing their profits and also the supply of marketable motor fuel so desirable under present conditions. The development in gasoline motors up to the present time has not reached a stage that would make the heavier still distillates, such as are used for blending a convenient or economical fuel if used as made, because of the difficulty in starting the motor with such fuel, and its tendency to deposit carbon in the cylinder and on the pistons from incomplete combustion, causing 'engine trouble'. Condensates produced by com-

pression is also an undesirable fuel for gasoline engines. It is exceedingly volatile, which causes losses in handling, is dangerous, because fumes are easily formed, and gives less power as compared with equal volume but heavier distillates, a larger number of gallons being required to develop the same power. It gives a quick, sharp explosion in a motor cylinder, but seems to lack 'push' after the explosion has taken place. In the above qualities it is in no way different from still-run products of similar gravity and similar in point, both products needing additions of less volatile, heavier, and more powerful fractions in order to form the most convenient and economical motor fuel. The latter fractions of the petroleum distillates, as compared with the heavier products, have a lower calorific value per gallon but a higher calorific value per pound. As all products of petroleum are sold in the United States by volume or liquid measure, the standard for comparison must be made on the heat unit per volume as not as per weight."

I am going to skip some.

#### "MARKETING UNBLENDED CONDENSATES.

"A small quantity of natural gas gasoline finds its way to consumers unblended. It is sold as 'gas-machine gasoline', a product which has a gravity of eighty to eighty-six Baume, used to make gas for certain domestic, commercial and chemical purposes, and as 'export gasoline', a product with a gravity of seventy-four to eighty degrees Baume scale, and four to six pound vapor tension, which is usually sold in containers to foreign trade."

Q. Now, is that the same material as you used—

A. No, it is not.

Q. And, under that same heading, "Marketing unblended condensates":

"The great bulk of condensates, however, is blended in one way or another before it reaches the consumer, but not always completely blended at the plant where it is made, or by the producer."

Now, what do you mean by completely blended?

Q. What do you mean by completely blended?

A. Having had as much naphtha or heavy product as can be absorbed and still be gasoline.

Q. Is that necessary to make it usable as gasoline?

A. It is not.

Q. Is it necessary to finish it?

A. That depends on what you are trying to finish it to.

Q. You said in response to a question of the court awhile ago that the object was to finish the material. Didn't you tell the court that awhile ago? A. No, sir.

Q. What did you say about finishing the material?

A. I said it might be called finished whenever you bring it to any specification.

Q. Then the material before being finished is not finished is it if—as judged by some specifications until it reached those specifications, is that your idea?

A. It could be so called.

Q. And you might properly call it unfinished gasoline, in that aspect? A. No, sir.

Q. Why not? You say no? A. No, sir.

Q. You said it was gasoline? A. Yes, sir.

Q. And said it would not be finished for that purpose?

A. Unfinished, would be whether or not you were working to any certain specifications.

Q. That is what I am asking you, if you are looking to specifications, and have not met those specifications, it is not finished?

A. Gasoline, as I see it, has no particular specifications. There may be a number of specifications.

Q. We are talking about—I say it is unfinished gasoline as judged by such specifications? A. It could be so.

Q. Then you might properly term it unfinished gasoline?

A. You could.

Q. Wouldn't that be absolutely proper in that situation?

A. The names given these products don't depend on whether they are proper or not, they are incidental.

Q. All right. Now, then, I will read some more, a little further along, the last paragraph of that dealt with California and other parts of the country. I will now read from page 84, under the head, "Methods of Blending." "Blending condensates with the various distillates used for that purpose as practiced at present is done in stages and at many different points in the precipitation, storage or transportation of the product." Now, as you have here described—you have heard described the practice followed by the Gypsy. Is that a practice of doing it in stages, that is blending some at the casinghead plant in the fields and at the refinery, is that what you refer to here as doing it in stages? A. Yes, sir.

Q. Then it is not complete until it is done at the refinery, is that correct? A. No.

Q. When that is being done. You said it is being done in stages, the blending?

A. Well, will you put the question again?

Q. I say the blending is not done when you are doing it in

stages until it has been finished at the refinery, isn't that correct? A. That is correct.

Q. "The product of plants that ship their condensate without being blended usually goes to refineries or blending stations—" I will omit that. It refers to West Virginia. I will read on page 86: "Where blending is by refining or blending companies, as has been described, the operation is complete and the blended product is ready for market." Is that correct? A. It is.

Mr. Swacker: Now, I would like to read to you from page 87 this statement, under the heading, partial blending at the plant. "Partial Blending at the Plant." "Some operators, because of the plant being in a place where it is difficult or costs too much to bring in large quantities of naphtha, or, more often because the company controls their refinery and it is their desire to refine the gasoline by further treatment, such as distilling, have adopted the practice of blending only so far as it is necessary for shipment at the compression plant or blending station, the final blending and treatment being given at the refineries or point where the desired quantities and qualities of distillate may be more readily obtained. Some operators blend partly at the plant and finish the operation at the beginning station or loading racks as described above, thus saving the cost of handling, of pipe line, and of the pumping capacity necessary to transfer all of the heavy blending stock to the plant and back to the loading station." Omitting that last sentence is it the practice you have last described, the practice used by the Gypsy Oil Company you have heard described who own a refinery, that is, control a refinery and ship it there for further treatment in the refinery?

A. Not necessarily.

Q. Not necessarily, but you have heard testified what the practice was in the case of the Gulf Refining Company and the Gypsy Oil Company? A. Yes, sir.

Q. Is that the practice you were here describing?

A. No, sir, it is not.

Q. It is not the same practice?

A. It is not the practice that I am describing.

Q. Well, now let's see just wherein it is not the same practice, you say, "Some operators consider the blending in a place where it is difficult or costs too much to bring a large quantity of naphtha," now the situation is, the Gulf Refining Company is down at Port Arthur, is it not?

A. I so understand.

Q. And these casinghead plants are in Oklahoma and it

would cost too much to bring the other naphtha to blend the material?

A. I don't know what it would cost, I don't know whether it would be too much or not.

Q. You did not have in mind such a situation as this when you wrote this? A. Not that situation.

Q. "Or more often because the company controls the refinery," you understand the Gulf Refining Company does—"And desires to refine the gasoline by further treatment," you have heard the employees of the company all testify that the purpose of it was for the refining of the material there?

A. I heard them so testify.

Q. So at least, the desire was present in this case that you have heard here stated? A. I don't admit that.

Q. You do not—"Have adopted the practice of blending articles so far as it is necessary for shipping to the compression plant or stations, the final blend being given at the refinery," is that not the practice that has been followed, here as testified?

A. The blending was done at the refinery, yes, sir.

Q. But it was blended first at Kiefer, only sufficient to meet the transportation requirements, is that not so?

A. I understand so.

Q. "And operators complete the final blend and treatment being given at the refinery," is that not true? A. Yes, sir.

Q. You regard the statements made by you in that pamphlet entirely accurate?

A. I believe entirely accurate for the period but conditions have changed since then.

Q. Has casinghead, this particular casinghead gasoline made at Jenks and Kiefer changed any in the meantime?

A. I could not say.

Q. Now, you say you are familiar with those plants, at Jenks and Kiefer, did you not?

A. Not at Jenks, never entered that plant before night before last.

Q. Did you look at it to some extent?

A. Very slightly.

Q. Did you observe whether there were expanders on the plant there? A. I did.

Q. Did you say there were? A. There were.

Q. Do you know what the situation at Kiefer is, whether there are expanders there or not?

A. They were when I was there.

Q. Will you say whether the use of expanders in a casinghead plant results in the production of a different quantity than a similar plant using the same casinghead without expanders? A That depends on the other points.

Q. What other points? A. You can reduce—

Q. What?

A. You can produce only the gasoline contained in the gas and the quantity will depend on the efficiency of the extraction.

Q. Will the qualities vary, depending upon whether or not there are expanders used? A. To some extent.

Q. Didn't you assert yesterday afternoon they would not?

A. I did not and so far as gasoline was concerned—

Q. Did you not assert yesterday that it would not make any difference in the qualities of the gas extracted?

A. I did not— You asked me whether that would make any difference and I said it would make a difference in the running of an automobile.

Q. Were you—would you advise a producer what effect the expanders would have on the quality of the condensate that it would make no difference?

A. That depends upon the other points in the plant.

Q. Then you would not be in a position to testify there would be a difference in the material you would get from a casinghead plant?

By Mr. Payne: I object—

The Court: I will let that in.

Mr. Payne: He is talking about an automobile—

The Court: You can cross him on redirect.

Mr. Swacker: Are you in a position from what you now know to say what the effect of the expanders are on the quality of the gasoline would be, whether there would be a difference in the gasoline produced by not having expanders there or having expanders there?

A. You asked me if I consider myself qualified?

Q. Yes? A. I do.

Q. What difference would it make if you had the expanders, could you determine whether the material produced thereafter was the same or different from that produced therefrom before? A. A difference in quantity.

Q. I said quality?

A. You can produce the same thing by compression.

Q. I am asking you this question. Have you ever made any experiment upon the plant or upon the condensate from a plant as to the installation of expanders to determine whether or not there is any difference in the quality of the production after or before the expanders have been put on or taken off? A. That question cannot be answered.

Q. Did you?

The Court: Did you ever personally make such an experiment?

A. No, sir.

Mr. Swacker: Did you ever make such an experiment?

A. No, sir.

Q. Now, do you claim to know how it would affect the quality otherwise? A. I do.

Q. Just how would it affect the quality?

A. Increase the product.

Q. The quality?

A. It might not affect the quality at all.

Q. Do you know or claim to know, which, you say you do not know from actual experimentation, but you know, or have you been advised of the effects upon the quality of the gasoline produced before and after expanders had been installed?

A. Only by what plant operators have done.

Q. Are you able to say whether or not it would increase the per cent of the lighter hydro carbons in the container?

A. The expanders put on them?

Q. Can you, or do you assert here now that it would not increase the relative quantity of lighter hydro carbon than would be contained in it?

A. All other conditions remaining the same, the same materials in the case it would.

Q. When you state what you regard as gasoline, if it is recorded in your testimony as gasoline, I wish you would define to us what you consider the word to cover?

A. The lighter petroleum distillate, fit for use in an automobile, I use the word automobile because—

Q. Well, fit?

A. Probably be more engines of that type used on this gasoline.

Q. You say fit for use, you mean fit for the use of an ordinary car? A. An ordinary automobile.

Q. You say you have attempted to use, or have you used in your test here the word gasoline as embracing and being a material of lighter hydro carbon distillate of petroleum suitable for ordinary use in ordinary cars, that correct?

A. Yes, sir.

Q. Was this statement on page 82 of your bulletin No. 151 true, or not true. "Gasoline produced by compression is also an undesirable fuel for gasoline engines," is that correct or not? A. That depends.

Q. Well, is it true, or is it not true?

A. A great many cases it is not true and a great many cases it is true. A compression plant product can be made

where it is perfectly satisfactory for fuel and a great many instances so made.

Q. Was there anything wrong with this Pierce Arrow car you tried last night? A. Not that I know of.

Q. It caused engine trouble with it? A. No, sir.

Q. Did not have any engine trouble? A. No, sir.

Q. Didn't your engine get hot? A. No, sir.

Q. Didn't get hot?

A. I don't believe that was the cause of our stopping.

Q. You say your engine didn't get hot?

A. Not abnormally hot; had no trouble with the sticking of the cylinders, or anything of that kind.

Q. Exceedingly volatile?

A. I presume so. The vapor tension test would show that.

Q. Was it dangerous?

A. Not in the hands of anybody that could use it with any amount of reasonable caution.

Q. Was it more dangerous than what we call curb gasoline? A. Yes.

Q. Now, would there be any greater loss in handling that, than there would be in handling curb gasoline? A. No.

Q. Would it give equal power per gallon of mileage that curb gasoline would? A. Probably not.

Q. Would it give quick short explosions in the motor cylinders? A. It did not.

Q. It did not pop? A. No, sir.

Q. At no time?

A. It back fired twice, but as far as the explosions were concerned, it wasn't noticeable.

Q. Is that a desirable quality in gasoline to back fire a couple of times in the course of an hour?

A. It is liable to happen any time.

Q. It is liable to happen?

A. That isn't a quality of gasoline.

Q. Well, did it lack push? A. Did not.

Q. How fast did you go coming in from Kiefer?

A. As fast as safety would warrant, 35 miles an hour.

Q. Did you have it wide open?

A. No, we didn't instruct the driver concerning that only not to go faster than was safe.

Q. You know that a Pierce Arrow car is capable of traveling 60 to 70 miles an hour with ease, do you not?

A. I do, it wouldn't have been a safe speed however.

Q. Now, are you able to state what are the finished commercial products of an ordinary petroleum refinery?

Mr. Payne: I object.

The Court: Why?

Mr. Payne: Because the witness was limited on his examination in chief to casinghead gasoline and he was not allowed to testify in reference to refineries. This is not proper cross examination.

The Court: I think that is correct.

Mr. Swacker: He is testifying here as to what is or is not gasoline.

The Court: You asked though as to what the other products of a refinery were.

Mr. Swacker: Yes, sir, but he attempted to cover the whole range of petroleum distillation.

The Court: You made the objection on that and I held him down to it.

Mr. Swacker: I would like an exception.

The Court: Very well.

Q. Can you say gasoline is one of the finished products of a petroleum refinery? A. I can.

Q. Is it? A. It is.

Q. Now, what is that produced from? A. Crude oil.

Q. Well, is it produced from a particular part of the crude oil? A. It is a lighter fraction of the crude oil.

Q. What are those lighter fractions known as?

A. Gasoline.

Q. What are they when they are fractions, merely parts of crude oil known as—

A. I don't understand the question.

Q. I say, before they may be finished products, what are they known as? A. You mean after treating?

Q. At any stage up to the time they are finished products of gasoline, what are those lighter fractions of crude petroleum known as?

Mr. Payne: I object. You sustain my objection, and he goes right along on the same course.

The Court: Lighter fractions of what?

Mr. Swacker: Crude petroleum. He started to tell, to testify to the analogy of what he claimed happened under the ground and in the refinery, and take it on up to the lighter fractions—

The Court: What are the lighter fractions?

Mr. Swacker: That is just what I am asking him, what are the lighter fractions of the petroleum? I am not going beyond that.

The Court: I will let him answer.

Q. Is this finished product, gasoline, the finished product of what is known as naphtha, a fraction of petroleum?

A. The fractions including gasoline, has been called for a long time under the generic name naphtha.

Q. Naphtha is the generic name covering all lighter hydro carbons, fractional distillants produced, above kerosene, even kerosene, is that correct? A. Including kerosene at times.

Q. And at times it extends down to and includes kerosene? A. Yes, sir.

Q. But in its known, correct usage, it includes that portion above kerosene?

A. It is too indefinite a term to pin down that way.

Q. You referred to this material as gasoline in response to my first inquiry, is gasoline and naphtha interchangeably used with relation to the material of which gasoline as a finished product is made? A. It can be.

Mr. Payne: I object to the question. It is too indefinite.

The Court: He has answered it.

Q. And is it so properly used?

The Court: Appropriately used.

A. I would not pass on it, whether properly used, these fractions are called distillates and in certain portions of the country they would not know what you mean by fractions. That is just a name—

Q. That is what I am asking you. Is it not a fact some people call gasoline, gasoline, and some people call it naphtha?

Mr. Payne: I object.

- ✓ A. The naphtha is a generic term.
- ✓ Q. And it embraces all gasoline, does it not?
- ✓ A. Yes, sir.

Mr. Payne: Just a moment. I object.

The Court: I don't think this is proper cross examination. I stopped you on that.

Mr. Swacker: I would like to ask the witness a specific question along that line, and that question is this—

The Court: He was confined to and examined about casinghead gasoline, and you objected to him being used as a general expert as to refinery methods, and I sustained it, and I required them to lay the predicate, and then they did not lay the predicate, and said they would just confine it to certain grounds.

Mr. Swacker: But he undertook to explain much earlier than that distillation processes of refining, to which we

made no objection, and I think we are entitled to cover gasoline as far as he did in that respect. He answered, if your honor recalls, a number of questions which your honor propounded to him, and he explained.

The Court: I will strike out all of the questions I propounded, and all of the answers to them, and admonish the jury that I just got that for my own information, and admonish the jury not to pay any attention to it.

Mr. Swacker: I assume he testified to that this morning on his direct examination.

Q. Did you say you regarded the process which you described beneath the earth as analogous to a refining process to the separation of the gas from the petroleum?

A. In so far as it separates those gases and vapors, I do.

Q. Does that constitute refining?

A. That is the reason why the products you get in a casinghead plant is refined. This is distillation or separation.

Q. Separation that involves vaporization, is refining?

A. Yes, sir.

Q. And when a material reaches the state of vapor, is it then a refined product? Is that correct? A. No.

Q. What is it, partially refined?

A. I never heard of it being spoken of as refined or unrefined when the—

Q. It is certainly not a refined gasoline when it is vapor, is it?

Mr. Payne: I object to that question, it being impossible of answer.

The Court: That is for the witness to say.

A. Gasoline vapor.

Mr. Payne: Gasoline vapor?

A. Same as you—

Mr. Swacker: You said that it was analogous to a process in a refinery, consisting of distillation in a refinery.

A. Parallel process.

Q. Now, then, that vapor, when it condenses, is a refined gasoline? A. It may be.

Q. Is that product subjected, so far as you know, to any further treating before it is sold as gasoline?

A. Very often it is further treated, and at times it is sold directly as gasoline.

Q. Can you tell me of any instance you know of, of the condensed vapor coming over from the first cut in distillation in a refinery being sold as gasoline? A. Yes, sir.

Q. Name where it was, and when?

A. Catalie, Alaska, in 1913.

Q. I am talking about the United States.

A. You didn't specify.

The Court: That is a part of the United States.

Mr. Swacker: I mean within the States themselves.

Mr. Payne: I object. It makes no difference where it was done.

The Court: He can state if he knows any other place.

Q. Do you know any other place?

A. I don't recall any other place just now.

Q. What were the circumstances under which that was done?

A. I don't know what you mean by circumstances.

Q. Was it a company refinery, or somebody that wanted this specially for their car, or what was their situation?

A. No, they were taking from the crude the things they could market; there wasn't a market there for lubricating oils and other products of the heavier fractions.

Q. Well, as to all the refineries you know of in the United States, what is the fact as to the practice as to the condensates coming over after the first cut, as to whether it is further treated in some fashion before it becomes refined gasoline and is so sold? A. In general, it is further refined.

Q. What are those processes of further refining?

A. Washing with acid, agitating with acid, treating with litharge.

Q. What further?

A. Nothing further necessarily in any of these.

Q. What further in addition to these processes you have named? A. I don't think of any.

Q. Well, you know of plant blending, don't you, at refineries? A. Yes.

Q. And they blend this very material off in refinery gasoline, don't they?

A. I couldn't state. We had gasoline long before there was casinghead gasoline.

Q. And they blended it long before there was casinghead gasoline? A. I understand so.

Q. And they did it at refineries as a part of the business of the refinery, did they not?

A. They did it at refineries.

Q. Now, you say that you consider this separation process under earth of the gas from the oil as a refining of the gas; is it not the fact that merely by means of this separating

process the crude oil would be refined in that case, having been separated, as it was, from the gas?

A. I can't see how you can refine crude oil, and still have crude oil left.

Mr. Swacker: Neither can I.

Q. I believe you also said nothing was refining or refined until or unless the impurities had been removed, is that correct?

A. I stated refining was a process of removing impurities?

Q. And unless there had been a process of removing impurities, there could be no refining, is that correct?

A. I think so.

Q. Then the article as to which there had been no removing of impurities would not be a refined article, is that correct?

A. It might be a refined article.

Q. It might be a refined article?

A. Yes, sir, if there were no impurities in it there would be no occasion to refine it.

Q. Then it would not be refined?

A. Would not have been refined, would not need refining.

Q. You say then it would not be refined, or would be refined? A. It would be termed a refined product.

Q. It had not been refined, however.

A. No, sir; however, it would be classified the same as other products which had been refined to bring them to the same point of neatness.

Q. Now, would you say that a perfectly pure product naturally so, which had no impurities, was unrefined, or would you say it was refined?

A. It would be classed as a refined product regardless of what treatment it might or might not have been through, it would be in the class of a refined product.

Q. That is your notion of the ordinary words refined and refining, is that correct?

A. The ordinary meaning of refining is making pure.

Q. And is a verb, that refining is a verb; to refine is a verb, to make pure, is that correct? A. Yes, sir.

Q. If it is unnecessary to make a thing pure because it is pure, it would be unrefined, though it would be pure.

A. You could make such a statement, make such a play of words.

The Court: He says it is classed, that would come under the old *adiom* axiom proposition, things amounting to the same equal each other.

A. As an example of that, Lake Superior Copper is never

refined from certain mines, it is melted and it is copper and goes on the market as wire copper.

Q. And has—after it is melted, it goes on the term refined copper? A. It is.

Q. And how described before it is melted? A. Copper.

Q. What else? A. Copper.

Q. Don't they call it Lake copper? A. Trade journals do.

Q. Isn't it always called Lake copper? A. No, it is not.

Q. It is, however, designated and you yourself designate it from other copper by calling it Lake copper, is that not true?

The Court: Now, I am going to bring this cross examination of this witness to a close pretty quick.

Mr. Swacker: He has covered a tremendous ground this morning.

The Court: You must adhere, I am going to bring this to a close.

*By Mr. Swacker.*

Q. I will ask you if this material is not frequently called raw casinghead? A. It is.

Q. You say it is known and sold as gasoline, did you not, this morning? A. Yes, sir.

Q. I would like to show you a copy of the National Trade News, and ask you if that is not a trade journal of the oil industry. A. It is.

Q. I will ask you to look at the item under Oklahoma, and where I am pointing my finger, and see how the material is described.

(Whereupon counsel exhibits to witness a certain book, and puts his finger on a certain paragraph.)

A. Raw casinghead.

Mr. Payne: Just a minute, please. Let me see what is going on here.

*By Mr. Swacker.*

Q. Did you—do you see any casinghead gasoline in this paper under the name gasoline? A. I don't know.

Mr. Payne: I object to that, whether he knows or not. That is not material.

Mr. Swacker: This witness has testified this commodity is sold and quoted in trade journals as gasoline, and I am showing him the trade journals to let him describe whether or not it is quoted in any of these trade journals as gasoline.

Mr. Payne: Part of it is called naphtha and gasoline.

Mr. Swacker: Gasoline and naphtha.

The Court: I will let it all go in for a while. Let that page go in, if you want to go in. It shows that under the head of gasoline.

Q. Look at the item 68-70—60-62—58-60 blend, and I will ask you if you can determine by those descriptions whether or not that is casinghead?

X A. The fact the word blend is used would mean it was casinghead—would mean it contained casinghead.

Q. Why would that indicate that to you?

A. Under the phraseology of the business.

Q. It is customary in trades of this product always to qualify the name gasoline by either raw or casinghead, or any particular kind of blend, naphtha, gasoline blend, and so forth, is that not true?

A. Very often designated as a description of the material.

Q. Did you ever know of anybody going up to a curb station and ask for gasoline and get raw casinghead gasoline?

A. Raw casinghead?

Q. Yes. A. I do not know.

Q. If you had ever gotten it, you only got it by describing it as raw casinghead or some particular blend, did you not?

A. I don't know what I got, I merely asked for gasoline and took what they gave me.

The Court: I am not going to allow this cross examination to be prolonged on this character of evidence. If you have anything else you want to bring out you had better proceed.

Q. Mr. Dykema, is it a custom to use curves to ascertain or determine whether or not a material is gasoline, is that a scientific practice?

A. It is a practice to study the distillation curves of a particular product. But whether you use it to determine whether a product should be called gasoline or not is questionable. You don't need a curve to determine whether it is gasoline or not.

Q. Well, is it a fact that scientific people in dealing with it do use these distillation curves to determine whether or not a particular material is a gasoline or not? A. It is not.

Q. It is not true?

A. No. They may use as to the points or curves to determine, but a complete curve is not necessary.

Q. But it is practically essential to determine whether the material is or is not gasoline? To at least have some of the distillation points, is that true?

A. No, sir, you can test it in other ways.

Q. How is that?

A. You can test it in other ways.

Q. You have to have the boiling point to determine it?

A. No, sir.

Q. Or fraction distillations of some kind?

A. No, sir, I would not say those are the only tests.

Q. Those are the ordinarily scientific tests, are they not?

A. Yes, sir, they are.

Q. Now, you described the still gas gasoline as coming off the still in the refinery, the first cut, as that coming from the refinery— A. Not necessarily the first cut.

Q. Whether the first cut or any other cut, is that ordinarily further refined, to make it a marketable product?

A. It is blended—

Q. To make it marketable?

A. No, it is marketable as it is.

Q. Have you observed the practice of trapping the proceeds of crude tanks or tank farms? A. I never have.

Q. Now, in the distillation of crude oil in a refinery after they have separated the naphtha fractions is not that material properly called unrefined naphtha?

Mr. Payne: Just a moment. I object, he is going right back to the refinery business.

The Court: Let him answer the question.

A. It can be so called.

Q. And properly?

A. It would designate about the product.

Q. Is it—state, the first time you ever heard that word, what did it purport to your mind, the word unrefined naphtha?

A. It meant the lighter cut of petroleum.

The Court: The lighter what?

A. The lighter cuts of petroleum, which needed further purification.

Q. And of those of which gasoline was manufactured?

A. No, just what I said.

Q. Those are called fractions of which gasoline is manufactured?

A. Part of that is cut out for gasoline fractions.

Q. That is, it embraced not only the material from which gasoline was manufactured, but some additional material?

The Court: Well, now does that embrace casinghead gasoline?

A. No, sir.

Q. But it does embrace this still gas gasoline, which you say is analogous to casinghead gasoline?

A. No, you are speaking of the product of stills, not a compression plant.

Q. I am speaking of still gas gasoline, I say that product was embraced within—

A. That could be called a naphtha.

Q. And an unrefined naphtha within this description which you say was imported to your mind when you first heard the word?

A. I did not include compression plant products. You are talking about a still vapor process.

Q. I am talking about still gas gasoline which comes over from the still, was that not a part of the lighter fractions of naphtha which you stated was the thing that occurred to your mind when you first heard the term unrefined naphtha?

A. Generically, it could be embraced in that.

Q. Now, you spoke of color being an indication of purity. It is a fact water might have thousands of germs in it and still not be pure and yet those germs in it not be discernible, isn't that true? A. I think so.

Q. So that color or transparency is no test of purity, is it?

A. It used to be a test of marketability of gasoline, and to this day people don't like discolored gasoline, though it may be no worse and it may be better than water white product.

Q. Now, when gasoline fails to reach specifications, what is ordinarily done with it? A. It is blended.

Q. So as to get it to some marketable specification, is that correct? A. Some marketable condition.

The Court: I think you have gone all over that.

Q. Now, this casinghead material we are talking about is frequently and very generally used by refineries as a raw material from which to make finished gasoline, is that not true?

A. Refineries are large purchasers of raw casinghead and also blended casinghead gasoline.

Q. And they use it as a material from which to make gasoline, is that not true, the finished product gasoline they sell?

A. I don't know what they do with it.

Q. You have told at great length—

The Court: He hasn't told—I will stop you on that.

Q. Now, in this distillation you claim takes place in the earth, if this is a part of the crude oil, as you claim it is, is it not a naphtha part?

A. In the broad sense, I think it could be called a naphtha part, although that impression is never given to any material in the earth, speaking of naphtha, naphtha is a refined product of naphtha distillation.

Q. Don't geologists, in making their reports describe the naphtha content of crude oil they may have found?

A. I have never heard of such a case. I don't know what a geologist would do in making a report of that kind.

Q. Have you ever heard crude oil classified by its contents naphtha and gasoline and down to the lower fractions?

Mr. Payne: I object.

The Court: I will stop this cross examination of this witness now.

Mr. Swacker: I have only had half an hour with this witness, and he has been on the stand three hours.

The Court: No, no.

Mr. Swacker: I think he has.

Mr. Payne: Is that all?

Mr. Swacker: The court says—

The Court: If there is anything that you have not covered, you can bring it to the attention of the court, and I will pass on it.

Mr. Swacker: I will get together very shortly while the jury is out, if you will give us a few minutes' recess. I may have two or three more questions I want to ask.

The Court: All right. Gentlemen of the jury, you will be excused under the admonition of the court heretofore given you, for a few minutes.

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(Whereupon court took a recess of five minutes. Whereupon court convened pursuant to recess, and the jurors having all been found to be present and counsel for the plaintiff and defendant announcing they were ready to proceed, the following further proceedings were had:)

Whereupon Mr. DYKEMA was recalled to the stand for further cross examination:

*Further Cross Examination by Mr. Swacker.*

Q. Mr. Dykema, this is that bulletin of yours, number 151, is it not? A. Yes, sir, it is.

Mr. Swacker: I would like to offer that in evidence, and ask that it be marked the next number Defendant's Exhibit 150.

The Court: It is admitted.

Q. Did you read the matter gotten out by the Bureau of Mines relative to this subject? A. Usually.

Q. Is that commonly regarded as authoritative literature?

A. I believe it is so considered by the public.

Q. Have you read the bulletin, technical paper 214 by E. W. Dean? A. I can not tell without the name of it

Q. Motor Gasoline Properties, Laboratory Methods of Testing and Practical Specifications?

A. I have read parts of it.

Q. Will you look at that and say if that is a paper issued by the Government?

A. I will identify it as a government bulletin of Mr. Deans.

Q. Do you know whether Mr. Dean therein stated the method of determining the material is by distillation curves?

A. I believe Mr. Dean uses that method.

Q. And the Department recommends the adoption and use of that method, do they not?

A. I don't know that they recommend it. They use it.

Mr. Swacker: All right. I will offer this in evidence as Defendant's Exhibit 151.

*Examination by Mr. Payne.*

Q. Mr. Dykema, in your paper on the recovery of gasoline from natural gas by compression and refrigeration, on page 83, you state that a small quantity of natural gas gasoline, finds its way to consumers unblended, it is sold as gas machine gasoline, a product with a gravity of 80 degrees to 86 degrees Baume used to make gas for certain domestic, commercial and chemical purposes and as export gasoline, a product with a gravity of 74 degrees to 80 degrees Baume and with 4 to 6 pounds vapor tension, difference and usually sold in containers to foreign trade. I believe you are asked on cross examination if that was the same gasoline that you used last night and you said no, I believe?

A. I did.

Q. And if not, wherein is it different?

A. In my experience I found that no two gases will produce exactly the same gasoline even under similar conditions. The gasoline spoken of there, as export gasoline is made by the Standard of Louisiana in a compression and refrigeration plant and without weathering is marketed and I was informed by their superintendent, Mr. Tubb, that they labeled it export gasoline and placed it in containers for export purposes.

Q. Is that the same type of gasoline that you used last night? A. It is the same type, it is casinghead gasoline.

Q. Now, on page 86 Mr. Swacker read one sentence reading, "Where blending is done by refining or blending companies as has been described, the operation is complete and the blended product is ready for market." Did you not say

in the next sentence, the blended gasoline made in the eastern fields has a gravity of so and so?

Mr. Swacker: I submit that is irrelevant and immaterial and has nothing to do with this material.

The Court: I suppose he wants that in to show he referred to that as blended gasoline.

Q. I asked you whether that statement was not in your bulletin, if you used the term blended gasoline? A. It is.

Q. Referring to your statement on page 87, "Partial blending at the plant," where you said the gasoline is sent to a refinery to refine the gasoline by further treatment such as distilling what was the nature of the product used in the case that you referred to, to blend with casinghead gasoline?

A. Some cases crude oil.

Q. Some cases crude oil? A. Yes, sir.

Q. And in that case would it require refining through a distillation process?

A. When it is blended with crude oil, it becomes a part of the crude oil and goes through the same processes as the natural product of the earth.

Q. Just like the crude oil?

A. Yes, sir, merely increases the crude oil content of any fraction added to the crude oil, in the casinghead plant.

Q. When it is blended in a refined product, such as naphtha, does it require any further refining? A. It does not.

Q. You spoke of unrefined naphtha; do you mean by that a distillate which requires further refining?

A. That term is more usually crude naphtha.

Q. Is that product—does that require any further refining ordinarily?

A. Ordinarily in the refining practice that is treated further, both the stills and other

Q. Well, now, do you state that was the product from the distillation of crude oil? A. I would.

Q. This casinghead gasoline, is that a product that requires further refining?

A. It does not. I am speaking generally.

The Court: That is a repetition. He already testified to that. You are going over the ground already covered.

Mr. Payne: I just wanted to bring out the distinction between casinghead gasoline and unrefined naphtha.

The Court: You brought that out in chief.

Q. You speak of blending in a refinery, the refinery gas-

oline, I will ask you whether that blending comes after the refining of the gasoline is completed? A. It does.

Mr. Payne: Take a copper, such as the copper—

The Court: I think that is irrelevant. We are taking up too much time. I don't think that is relevant or material.

Mr. Payne: This is my last question.

Q. Is that copper which is in a crude state called refined or unrefined copper?

A. I have never heard it called unrefined.

Mr. Payne: That is all.

*By Mr. Swacker.*

Q. You said a minute ago, when blending is done on casinghead, no refining is necessary as to it except blending it with other materials, but that is a refining necessary?

A. I couldn't say so.

Q. You know it is with crude? It is mixed with crude?

A. Yes, it is often mixed with crude oil.

Q. Done with every grade of material up to a certain crude? A. That is not true.

Q. It is done with crude oil?

A. Yes, sir.

Q. Done with gas oil? A. Yes, sir.

Q. Done with gasoline distillate? A. Yes, sir.

Q. Done with naphtha distillate? A. Yes, sir.

Q. And naphtha distillate is unrefined distillate?

A. Crude naphtha is unrefined.

Q. And it is done with wax?

A. Not with wax and things like that.

Q. Those are materials beyond the first fractionation—

A. I don't know what you mean by first fractionation.

Q. Oh, I see, I don't know that you qualified as an expert refiner, and I will leave that. You state that on your cross examination you said this matter that you described as "gas machine gasoline", is that the same as you used last night in the experiment, is that correct?

The Court: He explained that.

A. As to gravity it is not, but as to its source it was.

Q. Not to the extent. You state on your re-direct to Mr. Payne it was the same type of gasoline, did you not?

A. I did.

Q. I will ask you to look at the Oil Paint and Drug Reporters Journal of date 1920, and see if it is not quoted there at twenty-two and three-quarters cents, casing-

head, and whereas gas machine gasoline is quoted at 47½ cents; can you explain the discrepancy there if there is not so much difference?

Mr. Payne: I object. He can have no knowledge of what is quoted there.

Mr. Swacker: It is a fact this journal does show gas machine gasoline under the gasoline heading?

A. Yes, sir.

Mr. Payne: I object.

A. Not as to the casinghead we used last night, it is not that casinghead.

Mr. Swacker: That is all.

Mr. Payne: That is all.

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And thereupon, EDWIN DE BARR, produced for and examined as a witness for and on behalf of the United States in rebuttal testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name? A. Edwin De Barr.

Q. Where do you live, Dr. De Barr?

A. Norman, Oklahoma.

Q. What is your connection at Norman?

A. I am vice president of the State University and head of the department of chemistry at the present time.

Q. What academic degrees do you hold, Doctor?

A. Two Bachelors, one from Michigan Agricultural College, one from Michigan State University. A Master's Degree from Michigan Agricultural College and P. H. D. from Michigan State University, the major work being done in chemistry.

Q. How long have you been vice president of the State University at Norman?

A. Of the State University since statehood.

Q. How long have you been a professor at the college?

A. Since the first day of September, 1892.

Q. Doctor, what scientific research and what experience have you had in petroleum products?

A. I have been studying and investigating it in the country ever since the development at Bartlesville.

The Court: How many years has that been?

A. I don't know just now what date that was, your honor, but a good many years ago, couldn't give you the date. I have

tested out several plants in several ways, especially cracking plants and have considerable data in visiting absorption gasoline plants and refineries in the State of Oklahoma.

Q. What particular investigations have you made, doctor, in reference to casinghead gasoline?

A. I investigated the explosion at Ardmore, some years ago, took place a few years ago; investigated that explosion from casinghead gasoline.

Q. Have you made other investigations into the subject and experiments?

A. Yes, sir, in the laboratory and investigations of the gases from various oil wells and the oil from which these gases were taken in the Blackwell field and the Cushing field and in this north extension of the Glenn pool and down here at Beggs, I believe it is Beggs.

Q. Doctor, what product is it that casinghead gasoline plants produce by the compression of casinghead gas?

A. Casinghead gasoline.

Q. What other kind of gasolines are there?

A. Motor gasoline, casinghead gasoline, gas machine gasoline, cleaners gasoline, many varieties, depending on the purposes for which it is to be used.

Q. What are the principal methods of the manufacture of gasoline?

A. By compression and refrigeration of the natural gas, by compression, refrigeration and absorption of the natural gas gasoline, by cracking and making synthetic or artificial gasoline, by the process of straight cut or straight cut run refinery gasoline.

Q. Then gas gasoline, natural gas gasoline, straight run refinery gasoline and the crack gasoline? A. Yes, sir.

Q. Is the product of casinghead gasoline, you stated, casinghead gasoline properly denominated unrefined naphtha?

A. No, sir.

Q. Why not, doctor?

A. Because it is pure refined product as determined in most cases, especially in this field.

Q. How does it reach that stage of *refinedness*?

A. Its natural conditions in the earth, the means of communication by pipe lines from the earth and various apparatus employed until it reaches the storage tanks.

Q. In a liquid form? A. In a liquid form.

Q. Would the blending of casinghead gasoline with naphtha which has been given the usual three refinery processes, blending the casinghead gasoline produce unrefined naphtha?

A. No.

Q. Why not?

A. Because both products before put together are refined

and putting two refined products together is not a process of refining, the question of blending is simply a process, it is not a question of refining.

*By Mr. Payne.*

Q. Could it be possible to take casinghead gasoline and blend it with refined naphtha and secure what might be termed unrefined naphtha, and by addition of more of the same naphtha come back to gasoline?

A. Not that process to produce gasoline, no.

Q. Is casinghead gas, a gas which is produced by a natural distillation process in the earth?

A. I don't quite get that. Mr. Stenographer, read that.

(Question read.)

A. Yes.

Q. State the gravity of the gasoline which is usually used in gas machines?

A. Desirable to have 86 degree plant, but for about eight years, we have been unable to get much above 82, 82 is not so satisfactory as 86, but does very well.

Q. Wouldn't the fact that a particular gasoline is somewhat too volatile for economical uses in an automobile justify the calling of that gasoline something else? A. No.

Q. Does casinghead gasoline—

A. I didn't get that first part.

Q. Does casinghead gasoline have practically the same chemical properties as refinery gasoline?

A. Very similar and in many cases nearly identical, except in proportion.

Q. Except in proportion? A. Yes.

Q. Doctor, what is meant by recovery in the distillation test?

A. It means the amount of recovery in the complete distillation of a measured sample and measuring the amount of volume recovered from a given volume.

Q. Now, assume that you should subject the product of a casinghead gasoline plant to the distillation test, and your recovery should only be 88 per cent, what would that 88 per cent be? A. Gasoline.

Q. Would the fact that the products of the Gypsy plant failed to meet specifications of their customers for gasoline justify the calling of that product by some other name?

A. No.

Q. It would still be gasoline? A. Yes.

Q. What quality in gasoline enables the prompt starting of an automobile?

A. The low boiling constituents possessing properties of ignition when a spark is applied to it.

Q. Is it a fact that the more volatile the liquid is, the easier it is to start the car?

A. Yes, sir, to start the engine moving, that is the ignition of it, this answer applies to these latter constituents of the lighter casinghead gasoline.

Q. Would the blending of casinghead gasoline with refinery naphtha, would it in any way tend to refine the casinghead gasoline?

A. No, not as it comes from these, in this particular case.

Q. It is the mere mixing of the two together—

A. Take the casinghead gasoline that is perfectly refined, pure, as it comes from the earth, the blending does not refine the gasoline.

Q. And would the fact that the casinghead gasoline is blended in order to lower its gravity justify calling the casinghead gasoline unrefined naphtha? A. No.

Q. Doctor, do scientific works call casinghead gasoline unrefined naphtha?

Mr. Swacker: I object, unless the witness shows what scientific works he has in mind.

The Court: You may first show the predicate. He has read scientific works and the character of some of them.

Q. Have you read scientific works on the subject?

A. I have, many of them.

Q. Did any scientific work you have ever read refer to casinghead gasoline as unrefined naphtha?

A. I do not know of any that have.

Q. How many?

Mr. Swacker: My objection just goes because it wasn't limited to the books he read. I want him to limit his question to the books he has read.

A. I read quite extensively on the subject.

*By Mr. Payne.*

Q. Does the trade, so far as you know, ever call or refer to casinghead gasoline as unrefined naphtha?

A. I have never seen it in the trade journals.

Q. Take the case of the blend of casinghead gasoline with refinery naphtha; is that referred to anywhere as unrefined naphtha?

A. The only place I know of is in Bacon & Hamor and probably some things that is quoted therefrom.

Q. That is on the subject of casinghead gasoline?

A. No, not under the head of casinghead gasoline.

Q. The only place you have ever seen the term unrefined naphtha?

A. Yes, unrefined naphtha.

Q. Would—did that describe casinghead gasoline as unrefined naphtha?

A. No, sir.

Q. Wouldn't casinghead gasoline run a motor car?

Mr. Swacker: I object; incompetent, irrelevant and immaterial; doesn't show the particular kind of casing-head gasoline involved.

Q. Have you used casinghead gasoline in any car?

A. Yes.

Q. When and where?

A. During the investigation of the natural gas situation for preparation before the Corporation Commission I drove a Paige car—

Mr. Swacker: I object to further testimony, unless it is shown what material came from these plants, and that it is identical.

The Court: Let's see, and then I will be able to rule on it

A. I ran a Paige seven-passenger Sedan a great number of miles.

*The Court.*

Q. What sort of casinghead gasoline did you use?

A. I will get to that your honor. I will describe that.

The Court: Yes.

A. A part of the time on casinghead compression gasoline and absorption plant, both combined; and in another case, on certain compression casinghead gasoline. At an investigation for the North American Refinery, held at Cushing, I believe three years ago this summer, from some certain compression plants I drove a Ford car several hundred miles on compression gasoline. Also one of the Cushing plants. And I drove a Dodge roadster with compression casinghead gasoline quite a time, some week or two, in that distance, with nothing but casinghead compression gasoline.

Mr. Swacker: I ask now that that be stricken out as incompetent, irrelevant and immaterial, not properly identified as being the same material.

The Court: I will overrule the objection.

Mr. Swacker: Exception please.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Doctor, how did you come to drive these cars that you spoke of just now, were you experimenting or what?

A. The company for which I was laboring furnished me the gasoline without cost to myself and so I didn't buy it, it was given to me.

Q. You were not trying experiments?

A. I just drove it over the country with that particular kind of gasoline.

Q. Do you know whether you had drip or not?

A. No, it was drawn from the tank directly from which the casinghead gas was taken.

Q. Now you made some statement before the Oklahoma Corporation Commission, to the effect that you would not allow your wife to use this material in your car didn't you?

A. No, sir, I didn't.

Q. Something to that effect? A. No, sir.

Q. What did you say?

A. I said I considered in the making of gasoline that the end point to be necessary for the common people to use in a machine would need to be regulated in its volatility for a general use, but for a man like me, it need not be regulated. I didn't consider that my knowledge would entitle me to any protection with regards to volatility whatever.

Q. In other words, you think the ordinary users, they ought to be protected against this material as it is commonly manufactured on account of the volatility?

+ A. Yes, I do, the general public needs some protection.

Q. A scientific man who knows and understands the thing can handle it alright, but the ordinary people can not?

A. I did handle it, I have not let my wife run it because she was not in the field to run it, had she been, she would have ridden with me.

Q. But you would not care to let her go out and run it alone?

A. Unless she learned how to use it and then I would not care.

Q. And, Doctor, you made some experiments in the University in relation to the use of it for gas machine gasoline?

A. We have made some experiments and still making them for private corporations that are not ready for publication.

\* Q. Without regards to those not yet ready for publication, did you ever, or did you advise, or previously announce that it was unsatisfactory and so report to the Oklahoma Corporation Commission?

A. I don't believe I did report any case of unsatisfactory gasoline to the Corporation Commission, I do not recall it if I did.

Q. Now, if you make any kind of successful usable gas machine gasoline out of it it is necessary to give it the acid treatment it ought to have it is that not true?

A. Most of these casinghead gasolines in this state need no acid treatment.

Q. I am talking about making gas machine gasoline?

A. It is better but I don't know whether I have ever had, what I have had has been treated with acid or not, I think I have had some from the Cushing field that was not treated at all with acid.

Q. You have noticed the commercial quality of gas machine gasoline is about double the price?

A. Yes, we are at the mercy of the dealers and their prices.

Q. It is in fact necessary to make gas machine gasoline with a good deal of more care than is necessary to be taken to make ordinary motor fuel?

A. Yes, sir. The care of a particular kind has to be taken.

Q. What kind?

A. To see it is especially volatile and the over point is plenty low and the end point not too high.

Q. It is a very substantial element whether the material is a usable material, what its boiling points are?

A. Certain portions of its boiling points is very material.

Q. You said a while ago the low initial point is generally indicative of a certain quality in the way of starting cars?

A. In the way of ignition to start the machine.

Q. There is such a thing as having such a low initial point it would be so volatile it would not start at all?

A. I have been unable to ever find ninety gasoline that would not start a motor of the type of the continental red seal motor.

Q. It might start that but would not start an ordinary motor with it when it ran below?

A. Start a Rotenberg motor made by the Continental people, the Paige-Lyndwood motor made by the Continental people. The Paige-Lyndwood type, I know it will do that.

Q. When you do get below ninety, it will not start what type?

A. It will not start the ordinary type. The Buick is hard to use it in; hard to prime, but the other cars have pet-cocks in the top, have been able to start it with putting a few drops of 80 to 86 gasoline in the pet-cocks in the top.

Q. Do you know what is the fact, what the Corporation

Commission of Oklahoma has done with respect to ruling as to whether or not taxes should be paid on this material as gasoline, whether inspected and taxed for gasoline?

Mr. Chambers: I object.

The Court: You need not answer that.

Mr. Swacker: I think it is perfectly proper to show what the use of a term as provided by law, as being construed by the Corporation Commission.

The Court: That would involve too many issues, all that would have to be before this court. I exclude it.

Mr. Swacker: Well, may I ask him if it is not the fact that taxes and inspection is not extended to this material, gasoline taxes and inspection?

The Court: I will not permit that.

Mr. Swacker: I would like an exception, please.

Q. Now, in answering the questions on your direct examination, you used the word refined as synonymous with pure, did you not? A. I did in a certain sense, yes.

Q. Well, when you were saying that this was a refined product, you meant to use it synonymous with the word pure, that it was a pure product?

A. In a way yes, in a way, that it didn't need any more. It was pure sufficiently for the purpose for which it was to be applied or used.

Q. The word refined also is used in a sense otherwise of something which has been refined by some process, isn't that true? A. There are cases in which that is true.

Q. You were only using it in the sense of pure?

A. Yes, and doesn't need any purification for the purpose for which it is applied.

Q. But it is also necessary, in the manufacture of gasoline, even in the sense it is pure, to do something to correct its boiling point? A. Yes.

Q. And that is frequently done by a refinery?

A. Yes, and it is done without one. With or without one, either.

Q. Now, you have known casinghead to be blended into crude, have you not? A. Yes.

Q. Suppose you had an absolutely pure crude, it would still be necessary to refine that product if it was blended with it in order to get gasoline, wouldn't that be so?

A. If it was pure, I don't know whether it would need some other treatment besides blending.

Q. No, but I mean—in order to get gasoline out of the material which had been blended into crude, even though the

crude was absolutely free from impurities, still it would be necessary to refine this crude to get gasoline?

A. In case you would have to reduce part of the petroleum it would have to be removed, part of it, yes.

Q. So far as that weathering casinghead gasoline, you are disposing of the lighter parts? A. Yes.

Q. And they are extraneous to gasoline?

A. Depends on which you want to use it for. If you want to use it as motor gasoline, you want to get an automobile is a large amount, you want to get a large amount of the volatile ingredients to make an economical motor.

Q. Too much of these lighter parts are extraneous to such materials?

A. I don't know whether extraneous or undesirable.

Q. Isn't it a fact there are gases, no part of the material that becomes gasoline, which are incorporated in and escape incident to the weathering?

A. Read that.

(Question read.)

A. I wouldn't say that definitely, some parts of those gases would not be disposed of in weathering. You don't get rid of that altogether. You don't even get rid of the methane entirely.

Q. Some of them—

A. Some of them, but not all of any of them.

Q. But getting rid of some of them is necessary to make a motor fuel?

A. To make an economical one, but it is not to make a usable one. Depends on how much a man ought to pay for it.

Q. Limited it to what would be weathered off?

A. That is true, and in many I would like a few more of the volatile materials in it, and some of them I would not like so many. Some purchased at the curb have too much and some not enough.

Q. That is one of the corrections of the boiling points when the casinghead is sent to a refinery?

A. That may be done at the plant.

Q. But it is done there at the refinery? A. Yes, sir.

Q. That is one of the objects of sending casinghead to a refinery, to correct its boiling point?

A. That is one of the purposes.

Q. For general purposes the boiling points of casinghead are not proper boiling points?

A. Not for motor gasoline fuel, no not for economical motor gasoline, no.

Q. Now, I am not sure I heard you exactly correct; did

you say that casinghead gasoline was substantially the same as refined gasoline except as to its—

X A. The constituents are very similar, but the proportions of the constituents are usually different, unless you go deep down into your fractions. And to go into cracked gasoline, even in straight refinery production. I suppose you meant I shouldn't go into the cracked. I was taking the ordinary lighter gasoline.

Q. That is correct as to all the naphtha products, that is its only relation, the various constituents that determine what it is? A. All of what?

Q. All the naphtha fractions of crude oil?

A. Well, now, I don't know about that.

Q. Well, let's get at it this way. You know what is called naphtha? A. Yes, I know what the refineries call naphtha.

Q. Now, that has the same constituents as refinery gasoline, but only in different proportions, is that correct?

A. That may be different and may be the same.

Q. That is the principal difference, generally, in them; that causes the difference in gravity that is noticeable?

A. The difference in gravity is either caused by proportions from light oils or from heavier oils. Lighter constituents, I should say.

Q. In the case of naphtha, there is a preponderance of heavier light ends of naphtha fractions whereas in the case of refinery gasoline, it is—there is a preponderance of the lighter ends of naphtha, isn't that true?

A. It depends upon what naphtha you use.

Q. Take naphtha and gasoline from the same crude.

A. You take the naphtha, that is subject to great limitations, you know, because what was naphtha a few years ago, is entirely different from naphtha today, for even what you might call the unrefined naphtha. Your kerosene begins so much lower that you have to get further down.

Q. Yes, but it is generally true throughout its history that in naphtha, also in naphtha fractions, the heavier naphtha fractions of hydro carbons predominate, whereas in gasoline the lighter fractions of hydro carbons prevail?

A. I believe that is your contention.

Q. Don't you think that is true?

A. In a measure; and in a measure it is not true.

Q. The fact is the casinghead you say bears that relation to the refinery run gasoline, does it not?

A. What I might explain is that the lighter hydro carbons are in larger proportion in the casinghead gasoline and the heavier constituents, hydro carbons, are present in the lesser amount, while in the straight run gasoline you might

have a preponderance of the lighter ones or still going down, you have the heavy constituents, but it will also have the lighter ones, and it some times and in some fields varies in this Mid-Continent field, just the same as the casinghead gasoline.

Q. You almost said casinghead naphtha. A. No, sir.

Q. You got that far?

A. No, sir; I have known naphtha from casinghead naphtha; never heard of the name in my life until I heard of it in this case.

Q. Naphtha is a proper generic—?

A. I will not say I never heard of it in my life. I have heard of it in patents, but not papers or books.

Q. You know the Interstate Commerce Commission says in its transportation regulations—?

A. No, sir, I am not familiar.

Q. You are not familiar with that?

A. I have enough work to look up without looking up the transportation matters, I have too many other things to look up.

Q. You don't know whether they used the name or not?

A. I don't know about their using it and using it in the books, they don't use the word casinghead naphtha; that is the—that is a thing that has been coined in the last year or so.

Q. Naphtha is the proper designation of all lighter hydro carbon distillates of crude oil?

A. It is so designated by the refinery.

Q. And by the writers generally?

A. Some writers do; many writers, in fact.

Q. And there is a great deal of interchangeability of the use of the name naphtha and gasoline applied to the material more properly called gasoline?

A. Yes, sir, interchangeability of the use and confusibility in the use.

|| Q. Extreme confusion, that is so?

A. Yes, sir, extreme confusion in it.

Q. Has it been your observation that people miscall a great many of the constituents of petroleum and the products and the miscalling of the constituents of it by misnaming the product instead?

A. I think that is quite generally true with most all classes of business.

Q. As a matter of fact, expert refiners will very frequently refer to material in the name of the finished product to be made from it?

A. Yes, sir, as many different opinions as there are expert refiners.

Q. Of course, you stated a few minutes ago that the prin-

cipal difference between the refinery gasoline and the casing-head gasoline was in the degree of the preponderance of the lighter as against the heavier hydro carbons, of course that is also a test as to whether or not you could run a car, you could get down to the point where you could get such a preponderance of the lighter hydro carbons as it would not run a car at all?

A. Yes, sir, as well, as too heavy.

Q. Yes, get it down to where it is too heavy by a great preponderance of too heavy hydro carbons? A. Yes, sir.

Q. And get it up to where it is too light?

A. To run perhaps economically and entirely satisfactorily with all grades and of cars, possibly so.

Q. Do you remember what definition is given by Bacon & Hamor, of unrefined naphtha, what it covers?

A. I cannot quote it, I would rather read it.

Q. Was it not in substance those naphtha fractions boiling up to 150 centigrade?

A. I believe that is what they said. Those fractional distillates boiling up to 150 centigrade.

Q. And now you define this stuff as material that would be within that scope, boiling up to 150 degrees, Centigrade, is it?

A. I believe your data I have heard on this, this material is. I have seen casinghead gasoline that would comply with it.

Q. Assuming all casinghead within that definition used by Bacon & Hamor?

A. That would be as you want to interpret it.

Q. That would be correct?

A. I don't know. You stated what that was, unrefined.

Q. The word used was unrefined naphtha and the definition was those boiling up to 150 degrees centigrade, isn't that naphtha fraction?

A. I don't know with this definition and—you mean under that head was obtained—I think it would mean a certain operation.

Q. That is the only manner you follow. He was referring to the still fractions and you were referring to earth fractions, still both would be naphtha fractions?

A. One would be casinghead gasoline fractions and the other not.

Q. What I am trying to get at is naphtha fractions.

A. Casinghead gasoline—

Q. Yes? A. I call it gasoline.

Q. But nevertheless it is naphtha, that is true?

A. You do—

Q. Don't many writers take all of the hydro carbons that are lighter than kerosene, they class them as naphtha?

A. As derived from the crude petroleum, yes.

Q. And your theory in regard this material, is it is derived from the oil only this is done underground by nature?

A. Wouldn't sell that as petroleum oil and get an eighth royalty on it.

Q. That is a question, whether it is part of the petroleum oils or not. A. Yes.

Q. It is a well settled theory that is is not part of petroleum oil?

A. Some people believe it, but most people believe part of it.

Q. The decisions of this state held it is not.

A. I don't know what the late decisions on it are. I haven't heard it for some time. I haven't heard.

Q. By the way, have you noticed also a Bureau of Mines publication which used the term unrefined naphtha?

A. I believe that is where—I judge probably that term originated.

Q. By the Bureau of Mines circular?

A. Within the last few years, that is my opinion. I don't know whether Mr. Bacon and Hamor originated that, or the Bureau of Mines originated it. Originated about the same time I suspect.

Q. In your university work you always, of course, when you are trying to instruct anybody, distinguish this material from gasoline by calling it casinghead gasoline?

A. I call this casinghead gasoline just like I speak of ordinary gasoline as motor gasoline and gas machine gasoline as gas machine gasoline.

Q. But you consider the proper name to be casinghead gasoline?

A. That is the way I designate it from gasoline, every gasoline has a special prefix.

Q. Gasoline does not embrace as commonly used casinghead gasoline, does it? A. Yes, it includes it.

Q. When you are talking to your classes, when you speak of gasoline, you don't embrace in that casinghead gasoline?

A. Well, when I am talking about motor gasoline, I instruct them what the component parts of it are before I get done with the entire description of gasoline.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Doctor, you mentioned the Bureau of Mines publication as referring to unrefined naphtha; does that not mean what it says, naphtha that is unrefined? A. Yes, sir.

Q. And one that requires refining?

Mr. Swacker: I object to his attempting to state what the written word means.

The Court: So far as the question relates to what that means, he may testify to what he thinks unrefined naphtha is. But he can't go into what that book says.

Q. Now, on cross examination, there was referred to the confusion of that term. I will ask you whether there is any confusion between the terms refined and unrefined?

Mr. Swacker: I object to that, unless the witness is qualifying to show a different usage than the ordinary meaning of words provided by the dictionary.

The Court: You asked him about that, and I will permit him on re-direct examination to state if there is any confusion.

The Witness: Get that question, Mr. Stenographer, please.

(Question read.)

A. Not in my mind.

Q. So that when refiners refer to an unrefined product they mean just what they say?

Mr. Swacker: I object, the witness said what is in his mind and now he is being asked what is in the refiners mind.

The Court: Yes, I think so, sustain the objection.

Q. On the direct, you referred to at least three kinds of gasoline, when you say gasoline, you don't mean any one of the particular kinds, do you? A. I don't.

The Court: You include, you use it as a generic term you mean?

A. I use gasoline as a generic term, I use the plural when I want to speak of any particular kind of gasoline I specify the prefix to indicate what kind of gasoline.

*Further Cross Examination of the Witness by Mr. Swacker.*

Q. In other words you use it as a generic term covering all specifications of gasoline? A. Yes, sir.

Q. And that would embrace whether it was a finished or an unfinished stage?

A. Possibly slightly unfinished but not unfinished for the purposes for which it is to be used.

Q. Has to be to that degree of finished, going to be used for gasoline, but if they have achieved that degree of finish, it would embrace them in the definition of gasoline?

A. Yes, sir, I would not consider any of them completely finished.

Q. Now, from your observation of the practice of refiners, I will ask you if it is not their practice to use the word refined as applicable to the products produced by their refinery?

A. Yes, sir, they do, I suspect, that is my opinion, that is what I have got from talking with them.

Q. And your reading your observation is that is true?

A. Yes, sir.

Q. And that is applicable to a finished marketable product that has been finished in that refinery?

A. There or some of their collateral plants belonging to them

Mr. Swacker: That is all.

Mr. Payne: The government rests.

The Court: Witness stand aside.

(Witness dismissed.)

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Mr. Swacker: We will have four or five more witnesses. The government has rested in rebuttal may I ask?

The Court: Yes.

Mr. Swacker: May we have a few minutes to confer, four or five minutes.

The Court: Yes.

The Court: The jury may be excused for four or five minutes.

(Whereupon jury are excused for a few minutes.)

(Whereupon jury return into court after a short recess.)

#### S U R R E B U T T A L .

Whereupon, CHARLIE O'DONNELL, a witness called for and on behalf of the defendant in surrebuttal, having been first duly sworn, upon oath, according to law, took the witness stand and testified as follows, to-wit:

#### *Direct Examination by Mr. Green.*

Q. What is your name? A. Charlie O'Donnell.

Q. What is your name now? A. Charlie O'Donnell.

Q. What is your business A. Taxi driver.

Q. Speak up so the jury can hear you?

A. Taxi driver, a livery car driver.

Q. Did you drive a Packard car for some of the government attorneys and agents night before last?

Mr. Payne: We object to this line of testimony, not proper surrebuttal.

The Court: I will permit it.

Mr. Green: Just to lead up to it, did you go down there and make an experiment on the road?

A. Yes, sir.

Q. At the time you drained the tank, did you open both drains or one? A. Just the one.

Q. Have you since made an examination of that tank with a view of determining whether your opening the one would get all of the oil out?

A. You get it out by draining one, not all of it, I have found out since you have to drain them both.

Q. What is this tank that the oil remains in, what is that called? A. Called the reserve tank.

Q. How much oil will it hold? A. Five gallons.

Mr. Green: That is all.

*Cross Examination by Mr. Gann.*

Q. Did you know that this was an experiment that was being made? A. No, sir.

Q. Why did you call it that?

A. I heard the rest talking about it.

Q. Did you drive from Jenks to Tulsa with gasoline of 86 degrees that was put in the car? A. I don't think so.

Q. You don't think so? A. No, sir.

The Court: Did you know at the time they were trying to drain it?

A. Yes, sir.

The Court: Why didn't you point out the other reserve tank to them?

A. Really I didn't know there was a reserve tank.

The Court: How come you to find it out since?

A. I was talking to the Packard man yesterday evening.

The Court: How come you to be talking to the Packard man yesterday evening?

A. On account of that test, or whatever they was doing to it.

The Court: Who was the Packard man?

A. I forgot what his name is.

Mr. Swacker: He was the man that participated in the experiment yesterday.

The Court: Never mind about this, I will find out. Who was the Packard man?

A. Really I don't know what his name is, I have heard it too.

The Court: How come you to be talking to him?

A. Well really to find out if there was a reserve tank on it.

The Court: How come you to want to find out if there was a reserve tank on it if you didn't know it when they were draining it to get ready for a test down here at Jenks?

A. I didn't know you had to take them both out.

The Court: How come you to find it out yesterday?

A. I asked the Packard man.

The Court: How come you to ask the Packard man?

A. I was telling him about being down there the night before.

The Court: How come you to tell him about it?

A. We was talking about gasoline, that was one reason.

The Court: When was the first time you talked to any of these men on the other side?

A. The first time I talked to them? Late yesterday evening I guess it was.

The Court: Who did you talk to then?

A. I don't know who it was, he said he wanted a Packard car. I came in from the country and he said he wanted to go to Jenks.

The Court: Go ahead with the witness.

Q. You say there was a reserve tank that was capable of holding five gallons? A. Yes, sir.

Q. That was the full capacity of the tank?

A. Full capacity of the tank.

The Court: How long have you been running this car?

A. Since the sixteenth, I bought it the 16th.

The Court: 16th when?

A. This month.

The Court: You didn't know that reserve tank was in there?

A. No, sir, I didn't.

Q. Was there any gasoline in the reserve tank?

A. Well, when you fill one of these tanks plum full there is a button on the back you can turn it over either side and if you happen to run out one side, you can turn it over and run out of the other side.

Q. After you drained the main tank, didn't you put your finger on that button and drain the reserve tank, too?

A. No, sir.

Q. How do you know?

A. I know I did not, because I did not take but one plug out of the car; you would have to take the two plugs out to drain the car.

The Court: Did you tell them at the time you drained it?

A. I thought it had been drained.

Q. In the operation of the car—

The Court: You mean afterwards you went and talked to somebody to ascertain whether you had drained it?

A. I talked yesterday evening.

Q. And did not know whether you had drained it or not until you talked to this man?

A. No, I did not, thought I drained it at that time, that night.

Q. Did you know you did not drain it? A. I do now.

Q. Do you know you used the gasoline from that reserve tank?

The Court: You may stand aside. I will withdraw the evidence from the jury as to that test made night before last.

Mr. Payne: I move to strike out all of the testimony in regard to the test, on the ground they were all transactions that transpired subsequent to the day of the indictment, and on that ground alone inadmissible.

The Court: If you have any authorities on that, I will hear you.

Mr. Payne: It seems to me—

The Court: If you have any authorities, I will hear you.

Mr. Payne: I can get some in a few minutes.

The Court: I have asked for them several times. You have said that before.

Mr. Payne: The mere fact—

The Court: I don't care to hear you, what you have to say, unless you have some authorities.

Q. Is it not a fact this reserve tank would not operate unless you opened it?

A. Neither one will operate unless you open one.

Q. So your reserve tank is a reserve tank when you have run out of gasoline in a case of emergency when you run out of gasoline, you can use it, connect it up and use it, is that not true? A. Yes, sir.

Q. And it will not run unless you do affirmatively open it?

A. Yes, sir.

The Court: Did you affirmatively open it and use it in coming back?

A. I can show you.

The Court: You know whether or not you did.

A. It was affirmatively opened.

The Court: How could you affirmatively open it, unless you know it was there—unless you knew it was there?

Mr. Green: I have a tank here if you will let him use it.

The Court: No, I am not going to do that. I don't like the attitude of this witness. I will withdraw that, and you can stand aside.

Mr. Green: Your honor, I want to explain—

The Court: Never mind, I withdraw the evidence of this test, and you can stand aside.

(Witness dismissed.)

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The Court: I mean I withdraw the evidence as to the test made night before last, and admonish the jury not to consider it. The reason I withdraw it is because the attorneys were wrong and a man who would go out there ought to have enough caution to know if those things were done.

Mr. Payne: Your honor—

The Court: No, I am not asking for an explanation, I am explaining my own mind. I am not asking for anything from the lawyers. Anything further?

Mr. Green: Just let me confer a minute.

Mr. Diggs: If the court please, the defendant rests.

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The Court: Now, I will hear you in the morning. If you have any authorities on the motion to strike out that evidence, Mr. Payne.

Mr. Payne: All right.

Mr. Diggs: Your honor—

The Court: Mr. Diggs, you haven't got your exception in to the motion to strike.

Mr. Diggs: I want to ask the court to rule on it.

The Court: You may have a separate exception to each paragraph on your motion to strike that was made the other day, as if each of the motions were made separate, and you may have a separate exception as to each part referred to in your motion.

Mr. Diggs: Very well.

The Court: Gentlemen of the jury, you will be permitted to separate under the usual instructions and admonishment. You may go until tomorrow morning at ten o'clock. I will be here at 9:30 and hear argument, and then I want to talk to the lawyers in the case. The jury may go until ten o'clock tomorrow morning, and then I want the attorneys on each side to have their written instructions ready in the morning on the phases and theory of the law, the theory from each side.

Mr. Diggs: I didn't understand that.

The Court: I want the attorneys to have written instructions ready.

Mr. Diggs: Very well.

The Court: Court will take a recess until 9:30.

(Whereupon court took a recess until 9:30 o'clock a. m. tomorrow morning.)

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#### MORNING SESSION.

April 22nd, 1920, 9:30 A. M.

(Whereupon, Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, R. L. Williams, Judge, and counsel for plaintiff and counsel for defendant, and both sides having announced they were ready to proceed the following proceedings were had out of the presence of the jury, the jury having been excused until ten o'clock a. m.)

The Court: I don't know whether the record shows now Kiefer is in Creek county?

Mr. Diggs: Yes, sir.

The Court: Jenks also in Creek county?

Mr. Diggs: Yes, sir.

The Court: Eastern District of Oklahoma, and Drumright?

Mr. Diggs: No question about being in the Eastern District of Oklahoma.

The Court: They say there is no question about the location of Jenks, Kiefer and Drumright being in the Eastern District of Oklahoma, as alleged. Very well, now, gentlemen, we will take up the preliminaries.

Mr. Chambers: Your honor, the only preliminary we have certain suggestions with reference to instructions.

The Court: Pass them up.

Mr. Chambers: I want to apologize for the instructions not being complete in form.

The Court: You should set out the tariffs on each side; you had better set them out.

Mr. Chambers: I can give them to you this afternoon.

Mr. Gann: I understand your honor merely wants to set out the regulations.

The Court: The regulations you contend for.

Mr. Diggs: I understand that the court wanted the special instructions. We have prepared these, if the court please. I am unfamiliar with the practice your honor has adopted. Do you follow the state practice of having them all signed and the words refused?

The Court: There is nothing technical about my instructions. All I want is a fair chance to pass on what you want, and then I give you an exception.

Mr. Diggs: So your honor may be informed of our position, in addition to the special charges as requested—

The Court: I have had cases tried before me and they just bring them up and put them on my desk and I mark each one of them refused and exceptions allowed. All I want is a fair chance to pass on them.

And the foregoing, together with the appended Exhibits numbered 1, 2, 5 to 9, inclusive, 15, 22 to 25 inclusive, 36 to 42 inclusive, 45 to 47 inclusive, 50, 52 to 57 inclusive, 61, 62, 65, 66, 68, 69, 71, 74, 75, 77, 78, 80, 81 to 95 inclusive, 97 to 103 inclusive, 110 to 115 inclusive, 120, 135 to 140 inclusive, 142 to 152 inclusive, constitute all the evidence given or offered upon the trial of this cause.

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Whereupon on April 22nd, 1920, the following proceedings occurred:

Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, the counsel for both sides, the jury not having been called:

"By Mr. Diggs: I want to say to your honor so you will get our position clearly in your mind in addition to the special instruction when the jury comes in we will ask for a general instruction directing a verdict for the defendant.

"By the Court: Very well.

"By Mr. Diggs: We will also ask that this case be dismissed by the court for the want of jurisdiction arising from the question that it involves a construction of the tariffs as to whether this commodity included within the meaning of gasoline.

"By the Court: Very well. I do not think that question is free from doubt but when I am going to resolve that in favor of the government so that if the jury brings in an adverse verdict you can get a test but I am not sure about that. Those questions were raised in the demurrae and wherever there is ambiguity and the question is ambiguity, that itself is not enough to preclude it from being a criminal case. I am not sure about that.

"By Mr. Diggs: I just mentioned that at this time so your honor may consider it in connection.

"By the Court: Very well. I do not think the court ought to do that when a man's liberty is at stake. I would not do that if it involved a question of imprisonment. I would give my best judgment but these questions have got to be determined.

"The Court: Is there any special thing you want to bring to the attention of the court? I see you have brought some authorities over here.

"Mr. Diggs: I brought some authorities on the assumption the court wanted us to state our position on the question of jurisdiction.

"The Court: That is the same proposition as argued by demurrer?

"Mr. Swacker: No, sir, because the indictments are not so pleaded that we could raise it on demurrer; the railroads did but we could not.

"The Court: Yes.

"Mr. Swacker: And in the way it was pleaded, we could not argue this—

"The Court: You did—they did do it and I did not examine the pleadings, to see whether they should be, but I reached the conclusion the question ought to be definitely passed on by the Supreme Court of the United States, and I overruled the demurrer.

"Mr. Swacker: The way it is pleaded is that we shipped gasoline and the proof is we shipped casinghead gasoline which it is argued takes the gasoline rate. We think the case ought to be dismissed on the ground of variance, because of the variance between the pleadings and the proof, and the only way this jurisdictional question can be saved is by showing by the proof, because we cannot rely on the pleadings to prove it.

"The Court: What does the variance consist in?

"Mr. Swacker: The indictment charges we shipped gasoline. The proof is undisputed we shipped casinghead gasoline from which the government argues and contends that casinghead gasoline takes the gasoline rate, and if it had been pleaded that way it would have been demurrable on its face, under the Tie & Timber case, but not having been pleaded that way, the only way this question can be saved is by calling it to your honor's attention now, and asking an instruction on the variance of the testimony. Now, your honor is confronted with the necessity of trying to construe that tariff.

"The Court: Yes—I will not take it away from the jury on that ground. I will give you an exception to that." (S. M. pp. 1315-1318).

Whereupon the jury was called and all were found to be present.

"Mr. Diggs: May it please the court, the defendant now moves the court to dismiss this cause, on the ground

of want of jurisdiction and power of the court to hear and determine the same on the ground and for the reason that it appears from the evidence of the government that a question involving the construction of the articles which are included within the meaning of the tariff is involved.

"The Court: The motion will be overruled.

"Mr. Diggs: Exception" (S. M. p. 1325).

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"Comes now the defendant and requests the court to instruct the jury to bring in a verdict in this case of not guilty.

"The Court: The motion is denied.

"Mr. Diggs: Exception (S. M. p. 1325).

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"The defendant moves the court to instruct the jury there is a variance in this case, in that it appears from the evidence of the government witnesses that the article shipped by the defendant is casinghead gasoline, whereas the defendant is charged by the indictment, in each and every count thereof, of shipping gasoline.

"The Court: The motion will be denied.

"Mr. Diggs: Exception." (S. M. pp. 1325-1326).

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Thereupon MR. PAYNE began summing up for the plaintiff, in the course of which he made the following statements, to which the defendant then and there duly excepted:

Now, coming to the facts in this case, it is the position of the government that the shipments that have been referred to here are gasoline, were gasoline to start off with, they have always been gasoline, and nothing but gasoline. The casinghead gasoline plant of the Gypsy Oil Company at Kiefer was erected in 1913. They started to make gasoline and ship it as gasoline. At that time the rate to Port Arthur was 37 cents per hundred pounds. Ellis, the Traffic Manager of the Gulf Refining Company, sought to get that rate reduced. That is the business of the Traffic Manager, to get the rate as low as possible. Success is measured by the cheapness with which he gets his traffic moved. He wrote to the railroads and asked them to put in a rate of 33 cents on gasoline from Kiefer to Port Arthur. There were some letters that were put in evidence, and I want to read these as I go along so as to make them clear. This was a letter from C. B. Ellis, Traffic Manager of the Gulf Refining Company, Pittsburgh,

Pennsylvania, dated January 15, 1914, addressed to Mr. Powers, Assistant General Freight Agent of the Frisco. Mr. Powers was on the stand.

+ "Referring to telephone conversation, we want to move ten cars of gasoline from Kiefer to Port Arthur to be handled in our own boats to our eastern distributing stations. I find nothing but a 37 cent rate published from Kiefer to Port Arthur. Will you kindly arrange to publish a 33 cent rate from Kiefer to Port Arthur, this rate being the same as the north-bound rate from Port Arthur to Tulsa, as shown in Leland's tariff number 39-I. If this movement proves satisfactory I am sure that there will more of it to move. This business would route via the Frisco in connection with the Kansas City Southern or the Frisco in connection with the Houston and Texas Central. I believe that I can induce the Kansas City Southern to participate with you in the 33 cent rate but as you originate the business you no doubt can handle this satisfactory with them. I must hear from you not later than tomorrow.

C. B. ELLIS."

Then again on January 19th, 1914, Ellis again wrote to Powers, about a thirty-three cent rate on gasoline, that is not worth while reading. Effective April 3rd, 1914, the 33-cent rate on gasoline from Kiefer to Port Arthur became effective and all products from Kiefer to Port Arthur, all products produced at the plant, were shipped as gasoline and billed under that rate. Ellis continued his efforts to get the rate reduced. He asked the railroad companies to put in a very low rate on north bound shipments of naphtha as a transit proposition. The railroads declined to put that in. Then on February 9th, 1915, Ellis tried to get a rate of thirty cents on gasoline. He wrote a joint letter to J. R. Christian, General Freight Agent of the Sunset Central Lines and F. C. Reilly, traffic manager of the Frisco. Mr. Reilly was here on the witness stand. He said:

"This will acknowledge receipt of your letter of January 19th with reference to conversation in St. Louis relative to rates from Port Arthur to Kiefer and Kiefer to Port Arthur, as well as from North Fort Worth to Kiefer and from Kiefer to North Fort Worth. I have gone into this matter from all angles and am going to ask that you arrange for the publication of thirty cents from Port Arthur to Kief-

er and thirty cents from Kiefer to Port Arthur, and 25 cents from North Fort Worth to Kiefer and from Kiefer to North Fort Worth, applying on gasoline and naphtha—[that is naphtha north bound and gasoline south bound.] The present rates are unreasonable to the extent that they exceed the published rate from other producing points where the mileage haul and conditions are similar. Please advise at your earliest possible convenience what action in the premises will be taken. Yours truly,

C. B. ELLIS."

Mr. Reilly replied to that letter on March 18, 1915, stating:

"Referring to your joint letter of February 9th requesting publication of 30 cents on naphtha from Port Arthur to Kiefer, also the same rate in the reverse direction on gasoline. Your application has been given careful consideration and this is to advise that in view of the present conditions, that of our traffic not yielding sufficient revenue to pay the cost of operation and the further fact that we are now endeavoring to increase rather than to reduce rates it will be impractical to establish the rate at this time that you propose. Yours truly,

F. B. REILLY."

Now, gentlemen, that shows repeated and continued efforts to get the rate on gasoline reduced. The traffic was moving as gasoline and up to this time no one had ever heard of this stuff being shipped as unrefined naphtha. We say, having failed to get the rate reduced legitimately, that illegitimate means were used.

Mr. Diggs: If the court please, we object to the statement that illegitimate means were used to get tariffs.

The Court: Read the statement.

(Record read.)

. The Court: Now, the jury remembers the evidence. It is for the jury to determine the evidence. The court will give you the law on the case. On what ground do you object to that?

Mr. Diggs: We object to the use of the words "illegitimate means were used to secure this tariff," because there was no evidence introduced by the government to sustain such an allegation.

Mr. Chambers: There was evidence—

Mr. Payne: I think there was. It is a matter of argument whether there was.

The Court: The jury ought to remember the evidence, and any argument that is made on a point about which there is no evidence to sustain, that is no argument. It is for you to determine that. The court will give you the instructions as to the law.

Mr. Payne: You will be the judges of that, gentlemen, and here is the evidence. On May 16, 1916, Ellis sent a wire to Reilly reading:

"Will you please arrange through the Southwestern Tariff Committee for publication of the seventeen cent rate on crude unfinished naphtha, Port Arthur to Kiefer, and Kiefer to Port Arthur, on the same relative basis as now published in other items?"

Now, gentlemen of the jury I think the evidence in this case clearly shows that no crude unfinished naphtha was produced in Kiefer, and that the application for this low rate on this commodity was with the view and intention of shipping their gasoline and falsely billing it as crude unfinished naphtha or unrefined naphtha. From the—On the said date, Ellis wrote to Reilly stating:

"Confirming my telegram today requesting you to arrange for the publication of the 17 cent rate, applying both north and south bound between Port Arthur and West Port Arthur and Kiefer on the same relative basis as this product is published in item 3022½, supplement 41, Leland Tariff 26" and so forth. "All of our products from Port Arthur and North Fort Worth is an unrefined product and is passed through the refinery at Kiefer and the product secured from this partial refining is an unrefined product and is transported to our Port Arthur refinery and at that point further refined, and we are entitled to the unrefined rate as above outlined."

Now, gentlemen, we say that that statement, that that letter contains false statements not only specifically but in the general impression that it contains. There is a vast amount of evidence in this case which shows that they have no refinery at Kiefer. They have a casinghead gasoline plant. Now, it may be that viewed from a very broad standpoint, you may regard a casinghead plant as a refinery, but no one in the refinery business does and the

railroad men do not. When you say a refinery, you mean just what you say, where the crude oil is put through the still.

I think our evidence also shows that crude naphtha or unrefined naphtha is a product of a refinery made by the distillation of crude oil. And we say that the reference there to the refinery was to lend color to the application for the rate on crude unrefined naphtha, Ellis having in mind that the railroads would understand that crude naphtha or unrefined naphtha was a product that was produced only at a refinery. Based on Ellis' representation, the railroads put in a rate on unrefined naphtha of nineteen and one-half cents from Kiefer to Port Arthur. Now, that rate became effective on December 2, 1916. Now, up until that time the gasoline there produced had always been shipped to Port Arthur as gasoline. It had been shipped everywhere as gasoline. We say it was gasoline.

Now, effective on that date, all the stuff that was shipped to Port Arthur was billed as unrefined naphtha, and it took a rate of nineteen and one-half cents, although theretofore it had moved on a rate not lower than thirty-three cents, and the railroads had refused to reduce the gasoline rate below the thirty-three cent rate. (S. M. 1328 1336.)

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And thereafter MR. GANN summing up for the plaintiff made the following statements, to which the defendant then and there duly excepted:

"Mr. Tabor, the Vice-President of the Company, quoted a list of works of about 150 perhaps, all told on the subject of naphtha, but when it came to the subject of how many of those deal with unrefined naphtha he was crowded back to the conclusion that there was but one man and that he had been quoted by another, and one of those men was the employee or rather came from the Mellon Institute in Pittsburgh. Now what is this Mellon Institute? It is an institution that was founded by the Mellon family of Pittsburgh. Mr. W. L. Mellon is President of the Gulf Oil Corporation.

"By Mr. Diggs: If the court please we except to that as no evidence in the record showing Mr. Mellon's connection with this company. W. L. Mellon as President, the evidence being that the sworn evidence of George S. Davis was president.

"By the Court: Yes.

"By Mr. Gann: He was president of the Gulf Oil Corporation.

"By Mr. Diggs: No evidence connecting him with this case at all.

"By the Court: Yes there is not any evidence here and the jury will not consider it." (S. M. pp. 1391-1392.)

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And thereafter MR. GANN summing up for the complainant made the following statements to which the defendant duly *accepted*:

"Gentlemen of the jury there has been some suggestion here that the government was in control of the railroads part of this time. It is true the government was in control of the railroads and for that reason you would think that a corporation of this kind would refrain from shipping one commodity and billing it as another in order to get a lower rate. You gentlemen know that the government has guaranteed the revenue of the railroads up to October 1, this year and you men and all the general public has to contribute to the operation of these lines."

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And thereafter MR. CHAMBERS summing up for the complainant made the following statements to which the defendant duly *accepted*:

"Another thing I don't understand is that the Gulf Refining Company should not be punished or prosecuted for the violation of the law, first as *said was* by the distinguished counsel and no one more distinguished in the southwestern territory, first because the Gulf Refining Company has assumed that position in the financial affairs of the world that it would not commit a crime, and a violation of the law, and yet the books of our country, the law books of our country and the distinction of our courts in our country are full of the prosecutions against corporations and I will not say vigorous, but just as the corporation for the violations of the law and I don't see why they should not—why that should be any reason they should not be prosecuted. Another reason he gave as to why the Gulf Refining Company could not be prosecuted in this case is that they were liable that they ought to refund any civil action. They are financially able to refund and pay a judgment in a civil action and therefore although they have violated the law, we should, the government should

the government and the people of the United States should not prosecute them criminally for the violation of that law but the government of the United States should treat them so nice on account of their financial condition they should bring a civil action against them and further violators of the law let them go unpunished and merely require them to give back what they have taken from the United States. The opposite of that would be if some poor man like you or myself—I was going to say some poor devil like the—should violate laws of the country and was unable financially to respond in damages, then he should be incarcerated in the penitentiary for the violations of the law. But these people, because of their financial position should not be prosecuted. I am not overstating it, gentlemen of the jury, I am stating it just exactly as he state that because a civil action would lie, because they can respond to a civil action but we poor insignificant prosecutors of the government should bring a civil action and let them go free although they violated the law, while if you or I should violate the law and their man should feel and is able to pay it back so we prosecute him, if a man should steal and is unable to pay it back, prosecute him to the full extent of the law.

\* \* \* \* \*

Gentlemen of the jury, there is this in this case, if the commodity which they shipped and transported under the instructions which will be given to you by the court in your judgment, after hearing all of the evidence, is gasoline, then by reason of there being another name for it, they violated the laws, they placed the other shippers in a position where they were not able to compete with them; they placed in their own pockets hundreds of thousands of dollars of which they were not entitled to and which the people of the United States have got to bear the burdens and it is true that the Gulf Refining Company will have to join, thank goodness, the other people of the United States to pay these things if it had to be paid.

\* \* \* \* \*

The purpose to ship a dangerous commodity by representing it as an undangerous commodity, getting it shipped at a rate an undangerous commodity would be shipped at when as a matter of fact you know and I know under those tariffs and rules and regulations of the Interstate Commerce Commission that the rates upon dangerous articles must be properly tagged, and the rate would be higher. Now the commodity that was shipped from

Carterco had no casinghead gasoline in it, the commodity that was shipped from Muskogee to Baton Rouge, had not casinghead gasoline in it. It was not a dangerous article. It was not an article that had to be shipped under the rules and regulations regulating dangerous commodities. It was in one instance it was described as crude, unrefined naphtha and in the other instance it was described as unrefined naphtha and it was a first cut from the refinery of the refined crude oil.

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Whereupon on April 23, 1920, court reconvened pursuant to recess heretofore taken and the jury having been called by the clerk and all found to be present the following proceedings were had, to-wit:

By Mr. Chambers: Gentlemen of the jury:—

By the Court: Wait a minute, now gentlemen of the jury the defendant makes the following exception; the defendant excepts to the comment of the government's counsel Gann and Chambers suggesting that the United States government pecuniary affected by the manner of the consideration, the defendant not being on trial on charge of defrauding the United States and also except to the comment of government counsel Chambers upon the wealth of the defendant; such comment to the jury being highly improper and calculated *and* inflame and defendant moves the court to instruct the jury to especially disregard such remarks. And defendant also excepts to the statement of Mr. Chambers to the jury charging the defendant had violated the safe transportation rules, such charge being contrary to the fact and admission of the government, and calculated to inflame; and defendant moves the court to especially instruct the jury regarding it. Now yesterday, both sides on these points, to my mind went outside of the proper domain, as there was no objection I permitted them to do that. One side charged in the argument that the railroad a part of the time when the railroad under the war, under the Federal Control. Then the statement was made about what the result would be affecting members of the jury. Everything else, that has got nothing to do with the case. Then the other side said how it affect their clients, how they could be made to refund in civil damages. So I admonish you to try the case according to the evidence. Hear the arguments of the attorneys, and when they are sound, if they are sound that is for you to determine about that. If they do not, confine

themselves to the evidence in the case that is for you to determine about that. The case is to be tried without fear or favor. Without any regard as to how it affects people but solely with a view of the weight of evidence as to be determined by the jury and as to the law to be given you. The exception was made on the reconvening of court and after the argument had been made the previous day but before the arguments were finally concluded.

Mr. Swacker: We ask a special instruction regarding the safe transportation matter also.

By the Court: That goes to the jury for them to consider in whatever light of all the evidence in this case.

By Mr. Swacker: I don't think your honor recalls there was an admission by the gentlemen that there was no such violation and Mr. Gann made the admission.

By the Court: The jury are to determine what the admissions were and all the facts and whatever they are and they consider them in all the light of all the evidence in this case.

By Mr. Swacker: May we have an exception?

By the Court: To what?

By Mr. Swacker: The record shows Mr. Gann admitted the safety transportation rules were not violated.

By the Court: The jury knows what that is and they will make their finding according to the statements in evidence in the case and not according to the argument of either side when that argument is not confined to the admissions of the case. Proceed now:"

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And thereafter MR. CHAMBERS summing up for the plaintiff made the following statements, to which the defendant duly excepted:

"Mr. Chambers: \* \* \* Now gentlemen of the jury it was the books and records of the office and it was the books and records of the office of the Gulf Refining Company that was brought to the grand jury for their investigation. I do know whether it was a minor official, I do not know whether they had any authority or not. I know there was under the evidence one purpose in doing it and that purpose was to conceal from the people who inspected that book the fact that they themselves recognized and that it throughout these years was gasoline. We will say it was a minor official that did that; if that sort of a con-

dension to them and they think the mutilation of the records was being done by some minor official would release them that a minor official should attempt to protect the Gulf Refining Company is a mystery to me. And the evidence of the mutilation of the records before this jury that went before the grand jury and those records were brought to that grand jury by the highest official in the Gulf Refining Company and the Gulf Refining Company and the Gulf Refining Company of Pittsburgh and from Port Arthur and that is the evidence where they cut off the name of Kiefer gasoline, it was left off of that copy or their duplicate by the men that brought this record from Pittsburgh. The highest official, I do not remember his name, I don't remember whether it was Mr. Taber here with you all or not but the highest official who brought that to the grand jury at Muskogee and presented it to them knew that those records had been mutilated. He knew Kiefer gasoline had been cut off of that top and had he *forgetted* that in the grand jury and was honest and not attempting to conceal when he was not attempting to do anything wrong he would have come before the grand jury and said, gentlemen of the grand jury here is the record, it has been mutilated without our consent, we want to call your attention to the mutilation; we want to show you why it is or what it was that cut off of this mutilated record that was not a minor official; that was not a low employee; that was one of the highest officers that came with those records from Pittsburgh to Muskogee.

"By Mr. Swacker: We desire to except to the statement of what transpired at Muskogee; no such evidence in this case.

"By the Court: They will not consider what transpired before the grand jury, the evidence was that they brought them here and they were turned over to the grand jury investigation before it began, from the evidence, but the jury are to determine. The Court is not required to remember all the evidence. That is for the jury to remember the evidence. I will give you this special instruction. Gentlemen of the jury you are to try this case solely on the evidence and the admissions as made by either side and placed in the record as permitted by the court. Such evidence or admissions to be remembered by the jury, the statements of counsel in argument not borne out by the evidence, the statements of counsel on either side, not on any particular side, but on either side, not borne out by the evidence or admissions are not to be considered as evidence by the jury. Go ahead.

"By Mr. Chambers: I am sorry I was wrong. I admit I was wrong, the force and effect of everything that was as I said it. If they turned those records over to the government for the purpose of being used before the grand jury it was their duty just as much to tell the government and the officers of the government, if they were not trying to conceal a fact, it was just as much their duty to tell those officers as to tell any court or anybody else those records had been mutilated and that they didn't know it, and they should call their attention to that fact. Knowingly placing before the government evidence that was not what they showed that they were attempting to conceal a material fact in the controversy in this case." (S. M. pp. 1467-1470).

"By the Court: Gentlemen of the jury before I begin the charge I will read to you what I said this morning. Now on yesterday both sides on these points to my mind travelled outside of the domain of proper argument. I permitted them to do this, no objection being made by either side at the time. One side suggested in the argument that the railroads a part of the time were under Federal control being in the hands of the Director General; in another statement that was made that the result of the verdict might affect the interest of the taxpayers including the interests of the jurors or in substance that. Then on the part of the defendant it was averted to the fact that the defendant could be made to refund in a civil suit. The jury are admonished that the case is to be tried according to the evidence and the admissions in the case. The jury are to hear the arguments of the attorneys and when they consider the argument sound as relating to prove facts from the evidence admitted in the case and admissions in open court before the jury, that is for them to determine. If the attorneys do not confine themselves to the evidence and admitted facts in the case the jury should disregard such argument. The case is to be tried without fear or favor, and without prejudice and without any regard to pecuniary affect anyone, but solely with a view of justice. As regards to the safety appliances it is my understanding there is no contention of any violation of the same by the defendant in observing regulations prescribed as precautions to safety. That is for the purpose of reading that in the record and is an admonition to the jury." (S.M. pp. 1486-1487).

## CHARGE OF THE COURT

The Gulf Refining Company, as defendant, is charged by indictment in counts number 1 to 100 inclusive, with the exception of count No. 44, which has been dismissed and had been withdrawn from the consideration of the jury, the defendant in this indictment is charged with being a corporation organized and existing under the laws of Texas and engaged in the business of selling gasoline and other petroleum products with its place of business at West Port Arthur, in the State of Texas. (All of which for the purposes of this case has been admitted). It is further charged "that the Gypsy Oil Company during the period covered by the indictment was a corporation, organized under the laws of the State of Oklahoma and engaged in the business of producing gasoline at the places of Kiefer, Jenks, and Drumright, in the State of Oklahoma, and the shipping of said gasoline from said points to various points and places in other states and particularly to the said Gulf Refining Company, in tank cars, and consigned to it at West Port Arthur, in the State of Texas. That the Gypsy Oil Company during said period was a corporation existing under the laws of Oklahoma for the purpose of this case has been admitted. It is further charged that through the period covered by the indictment, to-wit: From on or about the 1st of December, 1916, to and including the first day of March, 1917, I believe the jury will be permitted to take this indictment with them to the jury room, that the St. Louis-San Francisco Railway Company was a corporation organized and existing under the laws of the State of Missouri, and was a common carrier engaged in the transportation of property in interstate commerce, wholly by railroad, for hire, and operated a railroad line which connected with the railway line of the Kansas City Southern Railway Company, and that during said period the Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and operated a railway line which connected with the railway line operated by the Texarkana & Ft. Smith Railway; that said Texarkana & Ft. Smith Railway Company during such period was a corporation organized and existing under the laws of the State of Texas and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, that throughout said period the three common carriers aforesaid, having theretofore established, maintained and operated a through railway route for continuous transportation of property, wholly by railroad,

for hire, from Kiefer, Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this Court, to Port Arthur and West Port Arthur, Texas, and all of said respecting connecting railway lines were engaged in the transportation of property, including transportation of gasoline, for hire, over said railway routes and were subject to the provisions of the Acts of Congress approved February 4th, 1887, entitled "An Act to regulate Commerce," and Acts of Congress amendatory thereof and supplementary thereto.

The further allegation is that between December the 28th, 1917, and prior thereto, the Atchison, Topeka & Santa Fe Railway Company, a corporation existing under the laws of the State of Kansas, the Gulf, Colorado & Santa Fe Railway Company, a corporation existing under the laws of the State of Texas, and the said Texarkana & Fort Smith Railway Company were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of the said The Atchison, Topeka & Santa Fe Railway, to-wit: Drumright, to certain points on the line of the said Texarkana & Fort Smith Railway Company to-wit: said Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Drumright to said Port Arthur and West Port Arthur and were subject to the Act of Congress approved February 4th, 1887, entitled "An Act to regulate commerce" and to the acts of Congress amendatory thereof and supplementary thereto; and there is an allegation as to the interstate route of the Midland Valley, the Kansas City Southern and Texarkana & Ft. Smith Railroad Company constituted an interstate line and being an interstate carrier in the words substantially the same as heretofore referred to. It is admitted that all of said railroads were corporations organized and existing as alleged in the indictment, admitted for the purposes of this case, and that the said Gulf Refining Company and the said Gypsy Oil Company each were corporations existing and organized as alleged in the indictment. These admissions are solely for the purpose of this case.

Counts from 1 to 15 inclusive relate to alleged concessions as to shipments from Kiefer, Oklahoma over the St. Louis & San Francisco Railway Company, Kansas City Southern, Texarkana & Fort Smith Railway Companies.

Counts from 16 to 35 inclusive, relate to alleged concessions as to shipments from Kiefer, Oklahoma, over the Mid-

land Valley, Kansas City Southern, and Texarkana & Fort Smith Railway Companies.

Counts from 36 to 40 inclusive, relate to alleged concessions whereby on account of such concessions a discrimination was practiced on account of said shipments from Kiefer, Oklahoma, over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith Railway Companies.

Counts from 41 to 64, inclusive, with the exception of Count 44 which, having been dismissed, is excluded from your consideration, relate to alleged concessions on shipments from Jenks, Oklahoma, over the Midland Valley, Kansas City Southern, Texarkana & Fort Smith Railway Companies.

Counts from 65 to 80, inclusive, relate to alleged concessions on shipments from Jenks, Oklahoma over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith Railway Companies.

Counts from 81 to 85, inclusive relate to alleged concessions and on account of such concessions it is alleged that discriminations were practiced, as to shipments from Jenks, Oklahoma, over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith railway companies.

Counts from 86 to 100, inclusive, relate to alleged concessions as to shipments from Drumright, Oklahoma, over the Atchison, Topeka & Santa Fe, Gulf Colorado & Santa Fe and Texarkana & Fort Smith Railway Companies. The alleged shipments between said points were consigned by the Gypsy Oil Company to the defendant, the Gulf Refining Company.

The allegation is that throughout the period covering all of said shipments that there were established according to the acts of congress joint rates and charges for the transportation of certain properties, to-wit: gasoline in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges which said schedules and tariffs of rates and charges, throughout said period showed the joint rate on each of said routes herein referred to for the transportation of gasoline in tank cars between said points over said four routes, to-wit: (1) over the St. Louis, San Francisco Railway Company, Kansas City Southern and Texarkana & Fort Smith Railway Companies between Kiefer, Oklahoma, and Port Arthur and West Port Arthur, Texas, herein referred to as route number one} and over the Midland Valley Railway Co., Kansas City Southern Railway Co. and Texarkana & Fort Smith Railway

Company between the same places and herein referred to as route number two, and over the Midland Valley Railroad Co., Kansas City Southern Railway, and Texarkana & Fort Smith Railway Company between the points of Jenks, Oklahoma, and Port Arthur, Texas, herein referred to as route number three; and over the Atchison, Topeka & Santa Fe, Gulf, Colorado & Santa Fe Railroad and Texarkana & Fort Smith Railway Company between the points of Drumright, Oklahoma, and West Port Arthur, and Port Arthur, Texas, and herein referred to as route number four. The rate for the transportation of gasoline in tank cars, the rate on gasoline as shown by the tariff sheets introduced in evidence from December 2, 1916, to June 24, 1918, from Kiefer, Oklahoma, to West Port Arthur, Routes 1 and 2, was 33 cents. From Jenks, Oklahoma, to West Port Arthur, Texas, over the route alleged in the indictment, and which is designated here as route No. 3 was 39 cents; and from Drumright, Oklahoma, to West Port Arthur, Texas, over the route as alleged in the indictment which is the route herein referred to in these instructions as route No. 4, was 40 cents. From June 25, 1918, to July 28, 1918, over said route between said Kiefer and West Port Arthur 41- $\frac{1}{2}$  cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 49 cents; and over said route between Drumright, Oklahoma, and West Port Arthur, Texas, 50 cents, of course this means fifty cents per hundred weight. From July 28, 1918, to May 31, 1919, over said route between Kiefer, Oklahoma, and West Port Arthur, Texas, 37- $\frac{1}{2}$  cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 43- $\frac{1}{2}$  cents; and between Drumright, Oklahoma, and West Port Arthur, Texas, over said route 44- $\frac{1}{2}$  cents.

Now as to unrefined naphtha the rate from December 2, 1916, to February 2, 1917, over said route between Kiefer, Oklahoma, and Port Arthur, Texas, 19- $\frac{1}{2}$  cents; from February 3, 1917, to May 1, 1917, from Kiefer, Oklahoma to Port Arthur, Texas, over said route 19- $\frac{1}{2}$  cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 19- $\frac{1}{2}$  cents; from Drumright, Oklahoma, to Port Arthur, Texas, over said route 20- $\frac{1}{2}$  cents; from June 25, 1918, to July 28, 1918, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24- $\frac{1}{2}$  cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24- $\frac{1}{2}$  cents; from Drumright, Oklahoma, to Port Arthur Texas, over said route 25- $\frac{1}{2}$  cents; from July 29, 1918, to May 31, 1919, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24 cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24 cents; and from Drumright, Oklahoma, to Port Arthur, Texas, over said route 25 cents.

Now I will give you some of the allegations of the first count in the indictment so that you may get in your mind the specific charge in this case; the allegation is that the rate for the transportation of gasoline in substance in tank cars over the route which I believe bears route number 1 over the Frisco as the initial carrier, then connecting with the Kansas City Southern and the Texarkana & Fort Smith Railway, to points of destination in Texas, then these are interstate shipments; an interstate shipment is a shipment by an interstate carrier running through more than one state; a shipment over interstate railroads, interstate carriers from points in Oklahoma to points in Texas is an interstate shipment and such shipment are subject to regulations, Federal regulations as to commerce between the states. The allegation here is that the tariff rate on gasoline was 33 cents for each one hundred pounds,—the rate for the transportation of gasoline in tank cars over said route was alleged to be 33 cents and that such cars billed and shipped and consigned by the consignor and delivered at the point of destination and then and there with the delivery there became due the freight at that time, at the rate of 33 cents per hundred in accordance with the lawful fixed rate, but the charge is, now, in the indictment that a concession in respect to the transportation of said property in interstate commerce of 13- $\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the property so transported by the aforesaid common carrier whereby such property was transported from said initial point in Oklahoma to said destination point, which was West Port Arthur, Texas, over said route at the rate and charge of 19 $\frac{1}{2}$  cents for each one hundred pounds thereof, which was 13- $\frac{1}{2}$  cents less for each one hundred pounds thereof of the rate named in the tariffs and schedules published and filed as required by law and in force at the time upon said route, which said concession so accepted and received by the said defendant from the said carriers amounted to the specific amount designated in each count, so now the charge in all of these indictments except I believe from 36 to 40 and 81 to 85 are charged as straight concession, the concessions consisting in the accepting and receiving of the concessions from the carrier of a less rate than that prescribed in the tariff and accepting and paying this rate, when in fact they are alleged to be due the higher rate. Now in these other indictments from 36 to 40 and from 81 to 85 they are charged there substantially the same except the allegation is that a concession was practiced and that accepting the concession whereby—a discrimination was practiced and that the concession was received and accepted whereby a discrimination was practiced against the defendant's competitor, I believe the Texas Oil Company.

Now I believe I have stated to you that in all the indictments except from 31 to 40 and 81 to 85 that the allegation is as to the receiving and accepting the concessions and I have defined the allegations and as to the other indictments the charge is that they received or accepted the concession whereby a discrimination was practiced as against the named competitor. Now you will be permitted to take the indictment to the jury room. I refer to this merely to get the issues in your minds, to aid you in the expeditious determination of the case, but it will be your duty to examine these counts and determine specifically the issues as submitted to you.

Now in each count the allegation as to the number of the cars, the capacity and weight of each car and amount of freight due and amount paid is distinct and separate as to each indictment. It is admitted for the purpose of this case that the cars mentioned in each indictment was shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and place and over the lines mentioned in each count of the indictment and evidence was offered by the government as to the capacity of the cars and it was admitted for the purposes of this case that the freight was paid by the defendant as alleged. You are instructed that the only offense with which the defendant is charged is in having caused to be shipped to it and received by it gasoline at a rate less than the legal rate established for gasoline, and unless you find from the evidence beyond a reasonable doubt—just before that, less than the legal rate, established for gasoline in such manner and under such circumstances as heretofore pointed out to you amount to a charge for a concession or a concession whereby discrimination was practiced against a competitor, is alleged.

And unless you find from the evidence beyond a reasonable doubt that the commodity so shipped and so received by the defendant was gasoline, it is your duty to find the defendant not guilty, although you might believe from the evidence that the commodity shipped and received by the defendant was not unrefined naphtha but was a commodity which should have been shipped under another name than that of unrefined naphtha and should have borne a rate higher than that lawfully published and filed for that of unrefined naphtha.

The defendant, a corporation, enters upon this trial with the same presumption of innocence in its favor as if it were an individual. That presumption is that all defendants charged with a criminal offense under our system of government enter upon the trial with the presumption of innocence in their favor and that presumption of innocence remains in their favor until it is overcome by evidence. The indictment return-

ed by the Grand Jury is no evidence of the guilt of the defendant. It is merely the means afforded by which the charge is framed for the trial before the court and jury.

Before you will be authorized to convict this defendant you must believe it guilty, as charged, from the evidence beyond a reasonable doubt. A reasonable doubt is not a mere possibility of doubt, because everything relating to human affairs and depending on human evidence is open to some possible or imaginary doubt. It is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of the jury in that condition that you cannot say you feel an abiding conviction of the truth of the charge; such an abiding conviction as you would be willing to act upon in the more weighty and important matters relating to your own affairs. It is an honest, substantial misgiving generated by the insufficiency of the proof; it is such a doubt as naturally flows from a consideration of all the evidence, such a doubt as an honest, reasonable and careful man would entertain after a careful investigation and consideration of all the evidence; not a speculative doubt, or a vague conjecture, or possibility of the innocence of the accused. It is only necessary that you should have that certainty with which you transact your own most important concerns in life, and if you have that certainty, then you are convinced beyond a reasonable doubt.

All of the evidence introduced by both sides should be permitted to stand if you can reasonably reach such a conclusion, but if there is an irreconcilable conflict, then it becomes your duty to weigh the evidence with a view of determining what part you will believe and accept, and what part you disbelieve and reject as a result of the irreconcilable conflict in the evidence after a reasonable consideration of it, if you then find there is such an irreconcilable conflict. The jury are the exclusive judges of the credibility of the witnesses and the weight or value of their evidence. You see the witnesses as they take the witness stand; their demeanor, their appearance and manner; their intelligence or want of intelligence, candor or want of candor; opportunity to know what they testify to, and the reasonableness of their testimony; interest or want of interest in the result of the trial of the case; their unreasonable zeal if such is shown; inducement, if any; corroboration, if any; contradiction, if any, either by physical facts, contradictory statements or any character of evidence in the case.

Now in addition to that I will give you the rule as applying to expert evidence. That rule applies in a measure also to non-expert evidence, because the facts have to be proved upon which expert evidence operates. You prove the facts, lay the

predicate, and the facts in the case, what is being considered before the jury, and then experts are permitted then to express their opinions and give their reasons therefor to aid the jury in the final determination of the facts on the issues submitted to them.

The probative force, the judgment, the value, the opinion of expert evidence is for the jury. The probative force of the reason of such witnesses is a question of fact for the jurors; the ultimate decision of the belief carrying quality of the judgment of an expert is for the jury. The credibility of witnesses and the weight or value of the evidence is peculiarly within the province of the jury. No eminence and skill on the part of a witness divest the jury of this power and the consequent responsibility for its exercise even on the precise point covered by the judgment of the expert. The ultimate judgment of the jury as to every fact is the province of every litigant to insist upon under our system of government for jury trials. Within the limits prescribed by reason the evidence of the expert is not conclusive on the jury; where they regard the judgment as unreasonable they may decline to follow it. The jury system has brought to the administration of justice during its long past an element of common sense and reason which, in judging of the ordinary conduct of men, especially in criminal cases, is of the utmost value. Now as to things within the common ordinary experience of men there is the automatic reasoning for the jury, you might say, but things that are not within the common ordinary experience of men, experts are permitted on the hypothetical case which is presented before the jury within their domain of peculiar qualifications to express their opinion and give their reason therefor.

However intricate the subject upon which the expert testified, the jury must estimate the credibility of the witnesses, the reasonableness of their respective contentions, if there are contentions, the soundness of the different arguments by which they are supported. In judging of the weight of the evidence furnished by the inference, conclusion, or judgment of the witnesses, skilled or unskilled, the jury are governed in their freedom of action only by the requirement that they must employ reason in the matter. So here is an important case; you hear all the evidence, you consider all the evidence, and when I mean evidence I mean also all the admissions made by either side and placed in the record by the permission of the court, or admitted in the presence of the jury by the litigants on either side, you consider that, and then you consider the evidence of these experts, their reasons, you weigh them carefully, and then the ultimate responsibility is on you to give your best reason and your best thoughts and your best care-

in determining the ultimate fact as to the guilt or innocence of the accused before you.

Before I proceed further I will read the part of the statute which is applicable to this case. That part of what is known as the Elkins Act, being an Act entitled: "An Act to further regulate commerce with foreign nations and among the States"—a part of that Act I will read to you, which is as follows:

"It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit"—(here is the part applicable to this case) "accept, or receive any rebates, concession, or discrimination, in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariff published and filed by such carrier as is required by said act to regulate commerce and acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced."

Now certain regulations were admitted in evidence for the convenience of the jury just as I have had compiled for you these rates I have read to you. I will read you these regulations. Regulations for the safe transportation of dangerous articles other than explosives have been introduced in evidence, including Western Classifications, Nos. 55—whatever numbers they are—December 2, 1916, to September 1, 1918, have been introduced in evidence from which I quote as follows:

"(k) Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100° F. (90° F. November 1 to March 1) exceeds ten pounds per square inch, must be described as liquefied petroleum gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70° F. This product must be shipped in metal drums or barrels which comply with specifications No. 5, I believe, and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch from April 1 to October 1, and 20 pounds per square inch from October 1 to April 1, I believe it is April 1. When the vapor tension as above defined exceeds 25 pounds per square inch, cylinders as prescribed for compressed gases \*\*\* must be used. If you desire—they were introduced in evidence—and you may examine them yourself.

When the condensate, blended or unblended with other products, has a vapor tension as above defined not exceeding 10 pounds per square inch, and is shipped as 'gasoline' in an ordinary tank car—I believe gasoline is in quotation marks gentlemen—an ordinary tank car, 60 pound test class, defined in Master Car Builders' Association specifications for tank cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of 1 pound above or below and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or 'casinghead gas' is produced and shipped in a blended or unblended state; and the requirement for the construction of dome covers and valve setting at 25 pounds must be made effective not later than July 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than '20° F.'

When the 'blowing' of safety valves of a car containing inflammable liquids is noted any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and if practicable the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets, or wet gunny sacks will decrease the danger of igniting vapors escaping from a 'blowing' valve. The burning of these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

#### WESTERN CLASSIFICATION NO. 55 Sup. 5.

(k) Liquid condensates from natural gas or from casing-head gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products, must be described as liquefied petroleum gas when the vapor pressure at 100° F. (90° F. November 1 to March 1) exceeds 10 pounds per square inch.

When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding ten pounds per square inch, it must be described and shipped as gasoline, casinghead gasoline, or casinghead naphtha.

Liquefied petroleum gas of vapor pressure exceeding 10 pounds per square inch and not exceeding 15 pounds per square inch, from April 1, to October 1, and 20 pounds per square inch from October 1, to April 1, must be shipped in metal drums or barrels which comply with shipping container specification No. 5; or in special insulated tank cars approved for this service by the Master Car Builders' Association.

Liquefied petroleum gas of vapor pressure exceeding 15 or 20 pounds per square inch as provided herein, and not exceeding 25 pounds per square inch, must be shipped only in metal drums or barrels which comply with shipping container specification No. 5.

Liquefied petroleum gas of vapor pressure exceeding 25 pounds per square inch must be shipped in cylinders as prescribed for compressed gases. \* \* \*

When the liquid condensate, alone or blended with other petroleum products has a vapor pressure not exceeding 10 pounds per square inch it must be described as gasoline or casinghead gasoline or casinghead naphtha and must be shipped in metal drums or barrels complying with specification No. 5; or in ordinary tank cars, 60-pound test class, equipped with mechanical arrangement for closing of dome covers as specified in Master Car Builders specifications for tank cars.

Every tank car containing liquid condensates, either blended or unblended, including liquefied petroleum gas, as defined herein, must have safety valves set to operate at 25 pounds per square inch with a tolerance of 3 pounds above or below, and the mechanical arrangements for closing the dome covers of such cars must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure; or suitable vents that will be opened automatically by starting the operations of removing the dome cover must be provided.

The shipper must attach securely and conspicuously to the dome and dome cover three special white dome placards measuring four by ten inches, bearing the following wording: "My recollection is that the undisputed evidence shows that these placards were attached and worded as required by law.

**"CAUTION.  
AVOID ACCIDENTS  
DO NOT REMOVE THIS DOME COVER  
WHILE GAS PRESSURE EXISTS IN TANK.  
KEEP LIGHTED LANTERNS AWAY."**

One placard must be attached to each side of the dome and one placard must be attached to the dome cover. The presence of these special dome placards must be noted on the shipping order by the shipper and by the carrier on the billing accompanying the car. Placards must conform to samples furnished by the Chief Inspector of the Bureau of Explosives." (And it is my recollection of the evidence that these notations were made on the billing. The jury will remember that, however.)

You may also look to the manner in which these regulations were complied with by the defendant if same were complied with in any respect as to these shipments and consider the conduct of the defendant its agents and employees within the scope of their duties relative as to such requirements pertaining to these shipments and to all the circumstances relative thereto as shown by the evidence in this case. And then you may look to these regulations that are promulgated under agencies inaugurated by the Federal government as to what these commodities, or any of them, are called, or directed to be called in such regulations, if you find such there; that is for you to carefully consider these regulations in connection with all the evidence in the case to see what aid or assistance it may give you in the final determination of this case.

You are further instructed that regardless of what your conclusion may be as to what the material shipped actually was or as to what the proper name thereof was, you must find the defendant not guilty unless you believe beyond a reasonable doubt that the defendant acting reasonably did not believe that it could properly be described as unrefined naphtha, and so described it with the design and purpose of securing a concession or a concession whereby a discrimination was practiced with respect to its transportation. In such determination do you find that the commodity was gasoline and that that was an appropriate or a proper designation for it and did the defendant reasonably have such information or knowledge relative thereto? If so could it then reasonably believe that unrefined naphtha was a proper or appropriate designation? As to these matters you make your determination or finding from all the evidence in the case.

You are further instructed that every concession or concession whereby a discrimination is practiced is unlawful, but for any such concession or concessions whereby a discrimination is practiced to be subject to criminal prosecution in order to constitute a misdemeanor or other grades of crime the concession, or concession whereby a discrimination is practiced, must be knowingly granted, made, accepted or received; that is, that the thing granted, accepted or received must at the time of granting, accepting or receiving the same have been known to have been a concession or a concession whereby a discrimination was practiced and have been granted, accepted or received as such. It is the granting, receiving or accepting of the same with such knowledge that the law defines and punishes as a crime. But every individual, every being, and this is a being in law, the defendant, a corporation, is a being, a legal being, it acts through its agents and its employees within the scope of their authority. Now you have heard all the evidence. Do you believe that the defendant being acting through its agents employees within the scope of their authority had the knowledge as to what they were doing when they received this commodity at its point of destination at the rate of freight as shown; did they have the knowledge, did they know? If so, what was the purpose if they accepted or received it. Do you find from the evidence that they had the knowledge, that from their knowledge, if you find first beyond a reasonable doubt it was gasoline; if you find beyond a reasonable doubt that it was gasoline, then do you find beyond a reasonable doubt that it, through its employees and agents within the scope of their authority had knowledge as to these things. It is a rule of construction that every being is chargeable with the consequences of his acts when he has knowledge of those acts.

In order to find the defendant guilty it is not sufficient that you believe beyond a reasonable doubt that the commodity shipped was "not unrefined naphtha—I repeat that—It is not sufficient that you believe beyond a reasonable doubt that the commodity shipped was "not unrefined naphtha, but you must further believe from the evidence beyond a reasonable doubt that such commodity is as charged in the indictment, "that is, it was gasoline." In other words, it is not sufficient for you to believe from the evidence beyond a reasonable doubt that the commodity charged in the indictment to have been shipped could not have been appropriately or properly designated as unrefined naphtha, but you must also believe from the evidence beyond a reasonable doubt that the commodity described in the indictment was gasoline."

Section 1712 of the regulations for the transportation of dangerous articles other than explosives, by freight, as prescribed by the Interstate Commerce Commission, which is in evidence, provides that all shipments of all articles subject to such regulations offered for transportation in Interstate Commerce must be properly described by the shipper in his shipping provided for the description of such freight carriers' classification and tariff governing. And further, it is the duty of the shipper in shipping its commodity to comply with that section of the regulations. Now it was the duty of this carrier in billing it to bill it by the proper name. Then when it is billed, it is the duty of the carrier to apply the freight rate. Now you look at all of the evidence, at the conduct of everybody in this case.

Now gentlemen going back. We have the shipment and you have the delivery at the point of destination; you have the conduct of all the parties; look at all the conduct, look at everything that is favorable to the defendant; that is your duty to do that, and then consider everything that is against them both. If there is a circumstance that stands equal, a presumption against them and a presumption for them, you should resolve it in their favor; but as reasonable men you weigh this evidence under the law of reason.

If you find beyond a reasonable doubt that the defendant had a purpose to do an act forbidden by or in violation of a statute and that in doing so, as a reasonable person, it had knowledge that the commodity shipped was gasoline and that it should not be designated as unrefined naphtha. If you believe all this beyond a reasonable doubt you should convict the defendant. You don't have to go into this character of cases to find the degree of moral turpitude that would constitute grand larceny, but if you find that there was the purpose, and you find beyond a reasonable doubt, to do an act forbidden by act of Congress, or in violation of a Federal statute, or a Federal regulation that had the force of law, and that in doing so through its officers and employees within the scope of their authority as reasonable beings, it had the knowledge that the commodity shipped was gasoline and that it should not be designated as unrefined naphtha, and you find all these things beyond a reasonable doubt, then in my opinion the government's case would be made out. But now if you don't find all these elements beyond a reasonable doubt the government's case is not made out.

In order to find the defendant guilty as charged in the indictment you must find from the evidence beyond a reason-

able doubt that the defendant procured the commodity named in the indictment to be transported over the routes named in the indictment with the knowledge that it was to be transported at a rate less than that lawfully published and filed rate fixed for such commodity with the intention of knowingly receiving a concession, which intention continued until such concession was accepted or received. Evidence has been introduced as to certain erasures or changes or alterations as to certain records of the defendant. The defendant is not charged with altering or changing any records. This evidence was not admitted for any such purpose. The defendant is charged that it unlawfully did knowingly accept and receive a concession in certain counts and in other counts a concession whereby a discrimination was practiced. The question of the criminal intent is therefore involved in this case. So the evidence as to the erasures, alterations or changes in the record was admitted on that theory for the consideration of the jury, and they may give it such value as to such issue as they may deem proper. As to whether such changes, alterations or erasures were made by any agent, officer or employee of the defendant procuring such alleged concession, that is for the determination of the jury. It was admitted that the erasures, changes or alterations were made prior to the time the records were delivered to the agents of the government by the agents of the defendant. When the records were delivered to the agents of the government by the agents of the defendant such changes or erasure had already been made. Who else could have made the changes, alterations or erasures except an employee or officer or agent of the defendant? Why were such changes, alterations or erasures made? These are matters for your determination; and by whom were they made? If made by such officers, agents or employees of the defendant this is a matter for you to consider in determining as to whether or not there was a criminal intent in accepting and receiving such concession, if you find such was the case beyond a reasonable doubt. Where was this concession, if it was a concession, where was it accepted and received, or received, and where were these records kept relative to where such concession was received or accepted, if you find beyond a reasonable doubt that such concession was accepted or received? Now where were they? Who were the officers and the employees within the scope of their employment and within the scope of their authority that received or accepted such concession, if you find beyond a reasonable doubt that it was received or accepted? Now these records were within their custody and if they were changed by officers and agents with the scope of such authority who accepted or received such a concession, why was it done? These

are matters that address themselves to the ultimate consideration of a jury on the determination of the criminal intent in this case, if they find beyond a reasonable doubt that the offense has otherwise been proven.

In determining the name to be given a commodity to be delivered to a railroad company for interstate shipment, billed designated for such shipment, it should be the name by which it is generally known. If it is an article generally used in commerce its commercial name should be given; that is the name by which it is known and used in commerce; if the article is not an article generally used in commerce and not a general article of commerce, and has no such name, then you may look to its manufacture and look to those that sell it and buy it to see how it is called, and how it is denominated by them that manufacture it and by them that handle it. But the jury may be entitled to more; it may be necessary in order to be satisfied as to the name beyond a reasonable doubt you may have to look at the history of the article and its development.

Now you have got the field before you. Did it have a name in commerce? Did it have a name among manufacturers? After you have looked through that field are you satisfied as to the name beyond a reasonable doubt, or is it necessary to go back through its history and the development of its manufacture? All this evidence is before this jury and it is as I have said, it is for you to determine this ultimate fact.

The court instructs the jury as to the law and such instructions are binding upon the jury as to the law. The court may also, if he deems proper, express his opinion as to the weight or value of the evidence and give his reasons therefor. If the court expresses such opinion and gives such reasons therefor, it is the duty of the jury to consider such expressed opinion and reasons in the light of the evidence and in connection with all of the evidence in the case, but if the jury should not agree with the opinion of the court as to the weight or value of the evidence, as expressed by him, they are at liberty to disregard such opinion. The verdict of the jury must reflect the independent judgment of the twelve men; they are the ultimate triers of the fact.

I have already instructed you that the shipments as shown in this evidence were interstate shipments and are subject to interstate law. I have heretofore called that to your attention.

You may take your exceptions now.

Mr. Diggs: If the court please, your honor spoke with such rapidity, if there was any part I desired to take down I couldn't. If your honor will give us a few moments we will examine your honor's instructions. I do not know that there is any part we desire to except to, except I want to call the court's attention to where he used the word "alleged." The allegation said "knowingly, fraudulently and wilfully."

The Court: They didn't admit that, that was not intended, but they admitted the payment as to the amount and time, but they didn't admit that they fraudulently and unlawfully did it. That is what I meant as to the amount. They admit that on that car they paid so much freight, but they don't admit that in doing that that they did it unlawfully and that constituted a violation of the law.

Mr. Diggs: We ask the court to instruct the jury that the fact that we complied with the regulations of the Interstate Commerce Commission in billing and placarding the cars, should not be taken as an admission on our part, be imputed to us as an admission of guilt.

The Court: I did so instruct the jury in my charge.

Mr. Swacker: I know you did.

The Court: I instructed the jury that they were not charged with having violated the safety act; there was no contention. Now that would only be a circumstance against them in the event that with that act it would be found that they were treating it as gasoline.

Mr. Swacker: That is just the point; that is the use of the name if we had used it. Though we did use it according to the evidence, gasoline would not be taken against us as an admission since we were compelled to use that name by these regulations.

The Court: I don't take that as an admission, but I think that is a circumstance. I don't take that as an admission of guilt but I take that as a circumstance with all these rules and regulations to determine as to whether or not that could be found that they were treating that as gasoline. I think that is for the jury to determine and not a question of law. I think that is a fact for the jury, because now—you get these rules and regulations—I will hear you on that. Let's get the regulations. That would be just a rule of conduct, a rule of action. The way I construe the rules and regulations—I am not saying this for the jury, they will not consider it—that it would be either liquefied

gas or gasoline. Now I will let each side—they say as to certain things should be billed as gasoline, casinghead gasoline, or what else?

Mr. Swacker: Casinghead naphtha.

The Court: There is another place down there, and they give the certain weights and things where they say it would be liquefied gas. Now I have instructed the jury that if a circumstance was even, one pointing to an innocent act and the other pointing to a criminal act, and they were equal, that they should resolve it in favor of the defendant and I had these rules and regulations in mind. I think that is fairly submitted.

Mr. Swacker: And we will have our exceptions on the question of the rates or can we just spread that on the record later, as to federal control?

The Court: As to whether they were in force?

Mr. Swacker: Yes.

The Court: Yes, you have got that in the evidence and you may consider that saved in the record. Now I will repeat that instruction, that if and in a line of conduct you find that the defendant in complying with the regulations or any of the requirements of the Interstate Commerce Commission that that line of conduct could be construed as criminal and also as being innocent and that they are equal or approximately equal, that it is the duty of the jury to adopt the view favorable to the defendant. Now I think that fairly submits that and I think that is the law.

Mr. Green: Yes, that is what we want.

Mr. Swacker: I don't want to burden the court further but make plain the point we are getting at, for instance, when we shipped to Pittsburgh we were compelled to use the rules and therefore the fact we called it gasoline when we shipped it to Pittsburgh cannot be taken as an admission on our part that that was the proper name for it. It was a compliance with the rules.

The Court: I have instructed the jury to take all the evidence and all the circumstances in consideration and now I have instructed them that wherever there was an act that they find was committed and that the evidentiary force of that act might tend to criminality and also tend to innocence and if they were approximately equal as to innocence and as to criminality, that they should adopt the one favorable to the defendant and I think that is as

far as I can go. That puts this case in the domain of the jury.

Mr. Diggs: The principal thing is as I recall is you said if the jury found beyond a reasonable doubt that we shipped this article knowing it to be gasoline and knew it not to be unrefined naphtha that it would be the duty *them* of the jury to find the defendant guilty, as I understood your honor's charge, you left out the words, "any reference to the fact of shipping it knowingly to obtain a concession."

The Court: I said with a purpose of violating a statute.

Mr. Diggs: Your honor was going so rapidly I could not keep up and that is the reason I wanted to see your honor's instructions.

The Court: As I said to the jury, they are charged here with unlawfully knowingly doing this to accept or receive a concession, and although you might believe they committed some other offence under this evidence, you would not be justified in convicting them except on the offence that is charged, and in that language where I say, if they did it knowingly with the purpose I restrict it to that language, with the purpose of accepting or receiving a concession, if they did that knowingly with that purpose and they believe that beyond a reasonable doubt, that that would constitute a criminal intent, the knowledge, and it must be wilfully and knowingly done, and if they did it with the knowledge and a purpose to do that, in this character of case it carries a criminal intent with it.

Mr. Swacker: And we have our exceptions in the record as to the denied charges?

The Court: Yes, every one of them, they are in the record, Wherever I have given them partially, it will show, the notation to be made they were refused as asked and given as amended and you have your exceptions each time. There will be no trouble about giving you that if the question is necessary to have these exceptions properly in the record. Now are there any other exceptions?

Mr. Diggs: Just a second. No, sir, that is all.

The Court: Now for the benefit of the jury, the clerk has prepared a form of verdict. The jury in the jury room will select their own foreman. They may find this defendant guilty on all counts. You may find it not guilty on all counts. It is within your power to find the defendant guilty on some counts and not guilty on other counts. If

you find the defendant guilty on all counts your foreman will sign the verdict as prepared. You will note that the verdict, a paragraph of the verdict relates to each count and there is a blank line before the word guilty as to each count. When there is a finding of not guilty you will write the word not on that line so as to properly frame the verdict. Now it is twenty-five minutes after noon. The jury will, under the usual instructions—now the case is submitted to you and it becomes more necessary now than ever to be careful—to be careful not only in the jury room but on the outside. You may go now until two o'clock when you will come back and the clerk will give you the indictment and the prepared verdict and the bailiff will show you to your room where you will begin your deliberations.

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In the District Court of the United States for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant. No. 3716 Criminal.

#### REQUEST FOR INSTRUCTIONS.

Comes now the defendant and in writing request the court to give the following written instructions to the jury in behalf of the defendant, said instructions being hereto attached and numbered two to 36, both inclusive.

JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Defendant.*

#### No. 2.

You are instructed that you cannot find the defendant guilty under any count in the indictment unless you believe from the evidence, beyond a reasonable doubt, that the commodity which is charged in the indictment to have been shipped to and received by the defendant, was gasoline, and the fact that you might believe from the evidence that the commodity shipped was, and should have been described as liquefied petroleum gas, and that such liquefied petroleum gas bore the same traffic charge as gasoline, is wholly immaterial to any of the issues in this case, and is not to be considered by you in arriving at your verdict.

Refused because covered by general charge—see No. 16.  
Exception saved. R. L. Williams, Judge.

No. 3.

You are instructed that it is not sufficient for you to believe from the evidence that the commodity charged in the indictment to have been shipped to and received by the defendant might have been more accurately, or more appropriately described or designated as unfinished naphtha, but in order to find the defendant guilty, you must believe from evidence beyond a reasonable doubt, that the commodity described in the indictment was, as is in said indictment alleged, gasoline, and also must believe, beyond a reasonable doubt, that said commodity was not unrefined naphtha.

Given in general charge.

No. 4.

You are further instructed that in order to find the defendant guilty, it is not sufficient that you believe, beyond a reasonable doubt, that the commodity shipped to and received by the defendant is not unrefined naphtha, but you must further believe from the evidence, beyond a reasonable doubt, that such commodity is, as it is charged in the indictment, to be, gasoline.

Refused because covered in general charge. R. L. Williams, Judge.

No. 5.

You are further instructed that every concession, rebate or discrimination, no matter how honestly granted, made or received, is unlawful, and honesty of purpose or design does not prevent in a civil action or proceeding brought for that purpose, the recovery of the amount of any concession, rebate or discrimination established, and, in addition thereto, in proper cases penalties may be recovered. But, in order, for any claimed rebate, concession or discrimination to be subject to criminal prosecution, in order to constitute a misdemeanor or crime, the rebate, concession or discrimination must be knowingly granted, made, solicited, requested or received. That is, that the thing granted, made solicited, or received must, at the time of the granting, making, soliciting or reception, have been known to be a concession, discrimination or rebate, and have been granted, made, solicited or received as such, and it is the granting, making, soliciting or receiving of the same with such knowledge, that the law defines and punishes as a crime, and the *law* permits a resort to the criminal courts for punishment only where the guilty knowledge, purpose or design exists to grant, make, solicit or receive a rebate, concession or discrimination.

Refused as requested. Exceptions saved. Given as amended by me. Exceptions saved. R. L. Williams, Judge.

No. 6.

You are further instructed that upon the question of intent you are to consider carefully and give great weight to the uncontradicted evidence to the effect that the defendant corporation, previous to the time of its indictment, readily accorded full and complete access to its records and affairs to the government officials investigating the same; and you should bear in mind that such conduct is not consistent with the willful knowledge and design to obtain a concession or discrimination contrary to law; and as further bearing upon the question of intent, you should give consideration to the fact that the evidence shows undisputedly that the defendant company, at no time, sought to conceal its course or the character of the material shipped, but instead, even after it was aware of the fact that its acts were the subject of investigation by the government, continued in its course, which conduct is inconsistent with a guilty intent.

Refused, exception saved. R. L. Williams, Judge.

No. 7.

You are further instructed that the fact that the employees of the casinghead gasoline plants of the Gypsy Oil Company spoke of the commodity produced in said plants as gasoline, and that the officers and employees of other casinghead gasoline plants in the neighborhood of the Gypsy Oil Company's plants and government inspectors spoke of the product of said casinghead gasoline plants as gasoline, is not evidence that the commodity produced by the Gypsy Oil Company and shipped to and received by the defendant as unrefined naphtha was, in fact, gasoline, such statements not being evidence of the nature and character of the product so produced, shipped and received, but such evidence was admitted solely for the purpose of establishing the intent, if any, on the part of the defendant to receive a concession or discrimination in event that you should determine from the other evidence in the case, beyond a reasonable doubt, that the commodity shipped to and received by the defendant, was, in fact, gasoline, and you must first find from the evidence, beyond a reasonable doubt, that such commodity was gasoline, before you consider the fact that said commodity was described by the employees of such casinghead gasoline plants as gasoline.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 8.

You are further instructed that even if you find from the evidence, beyond a reasonable doubt, that the material or commodity alleged in the indictment to have been shipped to and received by the defendant was not unrefined naphtha, and if you should further find from the evidence, beyond a reasonable doubt, that such material or commodity is gasoline, it is your duty to return a verdict of not guilty, unless you further find from the evidence, beyond a reasonable doubt, that, at the time the defendant received the concession or discrimination set out in the indictment, it knew that the commodity shipped to and received by it was not unrefined naphtha, and was gasoline; and you must further find, beyond a reasonable doubt, that the defendant had no reasonable grounds for believing, and did not, in fact, believe such material or commodity to be unrefined naphtha, but at the time of receiving said concession or discrimination believed such material to be gasoline and received such concession or discrimination having such knowledge, and with the purpose and design of procuring the transportation of such commodity at rates less than those lawfully published and filed applicable thereto.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 9.

You are further instructed that unless all twelve of you are convinced, beyond a reasonable doubt, that the material could not be properly be *desinates* "unrefined naphtha," you cannot convict, but must return a verdict of not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 10.

You are further instructed that unless all of you are convinced beyond a reasonable doubt, that the material shipped was actually gasoline, you cannot convict the defendant, and it *it* your duty to return a verdict of not guilty.

Refused, R. L. Williams, Judge.

## No. 11.

You are further instructed that if you believe that the material shipped may properly be described as either unrefined naphtha or gasoline, you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 12.

You are further instructed that even though you are convinced, beyond a reasonable doubt, that the material shipped is actually gasoline, you cannot convict unless you are all convinced, beyond a reasonable doubt, that the defendant knew the material shipped could not properly be described as unrefined naphtha.

Refused. Exceptions saved. R. L. Williams, Judge.

**SPECIAL CHARGE NO. 13 REQUESTED BY THE DEFENDANT.**

Gentlemen of the Jury: You are instructed that if the defendant was acting in good faith and really believed the article shipped from Kiefer, Drumright and Jenks was unrefined naphtha, it cannot be guilty of the offense charged, even though you should be of the opinion that the article was gasoline and not unrefined naphtha.

Given amended. R. L. Williams, Judge.

## No. 14.

You are instructed that the defendant is not on trial for misbranding or misdescribing the commodity alleged in the indictment to have been shipped to and received by it, but is charged in the indictment with having shipped to and received by it gasoline, and if you find from the evidence, beyond a reasonable doubt, that the commodity shipped to and received by the defendant was not *property* and appropriately described by the name of unrefined naphtha and was not, in fact, unrefined naphtha, still you must find the defendant not guilty unless you further find from the evidence, beyond a reasonable doubt, that such commodity was gasoline, and should have been shipped and described as such, and further believe, beyond a reasonable doubt, that defendant knew it to be gasoline, and received the alleged-doubt, that defendant knew it to be gasoline, and received the alleged concession, or obtained the alleged discrimination with the intent thereby of procuring the transportation thereof at rates less than those lawfully published and filed applicable thereto; and unless you so believe beyond a reasonable doubt, you must find the defendant not guilty.

Refused. Exception saved. R. L. Williams, Judge.

## No. 15.

You are instructed that before you can find the defendant guilty, you must believe from the evidence, beyond a reason-

able doubt, that the commodity shipped to and received by the defendant on the dates set out in the indictment was not unrefined naphtha. You must further believe, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant, as described in the indictment, was gasoline, and you must further find beyond a reasonable doubt that the defendant knew the commodity was gasoline and shipped the same with the intent of thereby procuring a concession or discrimination, and that the said commodity was shipped on the dates and at the times in the indictment set forth, and received the alleged concession or discrimination, knowing it to be such, and with the purpose and design of thereby procuring the transportation of the commodity described in the indictment at rates less than those lawfully published and filed applicable thereto.

Refused. Exceptions saved. R. L. Williams.

No. 16.

You are further instructed that the sole offense with which the defendant is charged, under the indictment, is in having shipped to and received by it, gasoline at a rate less than the legal rate established for gasoline, and unless you find from the evidence, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant was, in fact, gasoline, it is your duty, and you are instructed to find the defendant not guilty even though you might believe from the evidence that the commodity shipped to and received by the defendant was not unrefined naphtha, but was a commodity which should have been shipped under another name than that of unrefined naphtha, and should have borne a rate equal to the rate lawfully published and filed for the transportation of gasoline.

Given as a part of general charge. Refused. Except. R. L. Williams, Judge.

No. 17.

If you are in doubt whether casinghead gasoline is a product of petroleum oil, you must find the defendant not guilty.

Refused. Exception saved. R. L. Williams, Judge.

No. 18.

You are further instructed that unless you believe from the evidence, beyond a reasonable doubt, that the defendant company was not honestly, though mistakenly, of the belief that the material shipped might properly be described as unrefined naphtha, you must find the defendant not guilty; in

this connection, you should give great weight to the uncontested evidence to the effect that the tariff naming the rate on unrefined naphtha was established at the request of the defendant company by the carriers involved upon the defendant company's representation that the product intended to be shipped was an unfinished article, that after publication of said tariff and before its becoming effective, the agent of the defendant company advised the agent of the carriers of the intention of said defendant company to begin shipping its product upon the becoming effective of said tariff under the name of, and at the rate applicable to the description of unrefined naphtha; that the shipping orders of the defendant company covering all the shipments set out in the indictment bore, upon their face, the rubber stamp placed thereon by the defendant company indicating that dome placards had been applied to the cars in conformity with the rules governing the safe transportation of the commodity, which rules required and limited the application of said placards to casinghead gasoline cars; further that said rules governing the safe transportation of explosives provided that the proper tariff name shall be used in describing any commodity subject thereto; that such shipments were subject to regular inspection of agents of the carriers whose duty it was to require that the material shipped be properly described, and to the further circumstance that while the evidence clearly shows that the agents of the carrier were at all times in position to be, and were by the defendant fully informed as to the nature of the commodity shipped, no action was taken by such carriers to question the description adopted by the defendant; in these circumstances, unless you believe, beyond a reasonable doubt, that the carriers deliberately intended to accord to the defendant a concession and discrimination, you must find the defendant not guilty.

Refused, covered. Exception saved. R. L. Williams,  
Judge.

#### No. 19.

You are further instructed that unless you are convinced, beyond a reasonable doubt, by evidence that each of the following circumstances is proved with respect to each count of the indictment, viz:—

- (a) That the shipments therein set forth were made, transported and delivered to the defendant.
- (b) That such shipment was of the weight set forth in each such count.
- (c) That the rate alleged in the indictment as applicable

thereto were lawfully published and filed with the Interstate Commerce Commission of the United States and known to the defendant, or posted at the stations from which such shipments were made.

(d) That the commodity shipped to the defendant in each of the shipments set forth in each count of the indictment, was, in fact, gasoline;

(e) That the defendant paid to the carriers transporting such commodity charges for such transportation computed upon rates less than those lawfully published and filed, with full knowledge that such payments were so in fact less.

(f) That such shipments were made upon the dates and in the cars in each count alleged; you must find the defendant not guilty; if you have a reasonable doubt as to the existence of any of the foregoing facts you must find the defendant not guilty.

Refused. Exceptions. R. L. Williams, Judge.

#### No. 20.

You are instructed that common carriers may lawfully publish and file special rates applicable to the transportation of particular commodities under particular circumstances lower than those applicable to such commodities under ordinary circumstances, and you must regard the action of the carriers as shown by the evidence, in publishing rates applicable to the transportation of unrefined naphtha, at less than the rates previously applying on gasoline as entirely lawful, and you should draw no inference whatever against the defendant from the fact of its taking advantage of such lawfully published and filed rate on unrefined naphtha, providing you have reasonable ground of belief that that term appropriately comprehends casinghead gasoline blended or unblended, and if you believe such term does appropriately comprehend such commodity, you must find the defendant not guilty.

Refused. Exceptions saved. Covered by general charge.  
R. L. Williams, Judge.

#### No. 21.

If you are in doubt as to whether the proper name of the commodity shipped is gasoline or unrefined naphtha, or if you believe that neither of such names is the proper name, but that its proper name is casinghead gasoline, you must find the defendant not guilty; if you believe that the defendant company honestly believed that the commodity shipped could be properly designated as unrefined naphtha, regardless of your own

conclusions with respect thereto, you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 22.

If you are in doubt whether casinghead gasoline is gasoline you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 23.

The act of any officer or agent of the defendant, which may be imputed to it as evidence of guilt, or considered by you as a circumstance from which guilt can be inferred, must be an act done or performed by such officer or agent within the scope of his employment and must be an act *done* or performed in knowingly receiving, accepting or obtaining a rebate, concession or discrimination.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 24.

Only the act of an agent, officer or employee of the defendant done and performed within the scope of his employment, can be imputed to the defendant for the purpose of establishing its guilt, and then only when knowingly done or performed for the purpose of procuring the commodity to be transported in interstate commerce at a rate less than the lawfully published and filed rate, with the intent, by such agent, officer or employee of the defendant obtaining thereby a rebate, concession or discrimination, and after such rebate, concession or discrimination has been obtained or received, no act of an agent, officer or employee of the defendant can be considered by you in determining the intent and guilty knowledge of the defendant, unless it be the act of the agent, officer or employee within the scope of his employment, who procured the unlawful transportation alleged and obtained the alleged rebate, concession or discrimination.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 25.

In order to find the defendant guilty as charged in the indictment, you must find from the evidence beyond a reasonable doubt, that defendant procured the commodity named in the indictment to be transported in interstate commerce over the routes named in the indictment, with the knowledge that it

was to be so transported at a rate less than the lawfully published and filed rates fixed for such commodity, with the intention of knowingly receiving a rebate, concession or discrimination, which intention must have continued up to and including the time of the reception of such rebate, concession or discrimination; and, unless you so find beyond a reasonable doubt, you must find the defendant not guilty; and, unless the defendant was guilty at the time of receiving the alleged rebate, concession or discrimination it could not become guilty by any subsequent act of its agents, officers or employees, and the fact that some of its books were subsequently changed or altered, is not evidence of guilt on the defendant, unless it appears that such changes or alterations were made by the agent, officer or employee of the company procuring the rebate, concession or discrimination, and you are instructed there is no evidence showing or tending to show such change or alteration was made, authorized or permitted by any such officer, agent or employee.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 26.

You are further instructed that certain evidence has been introduced with reference to changes and erasures of the defendant's records. No evidence has been introduced which shows, or tends to show, that any responsible officer or agent of the company authorized or acquiesced in this action, and you will, therefore, disregard any evidence upon this subject.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 27.

You are instructed that the word, "refined," cannot properly be applied to any raw product of nature, but can only be applied to a product whose nature, physical characteristics, or component parts have, in some manner, been altered, changed or added to by the act of man. (Refused. Exceptions saved. R. L. Williams, Judge.)

No. 28.

You are instructed that distillation is not, under all circumstances, essential to the art of refining, nor is distillation always applied for the purpose of removing impurities from the material distilled, and is often used, not for the purpose of removing impurities, or making the article distilled more pure, but for the purpose of separating the material into its component parts, or some portion of its component part, for the purpose of further treatment, or for the purpose of mix-

ing, blending or combining the same with like or different materials.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 29.

You are instructed that you are the sole judges of the credibility and weight to be attached to the evidence of any witness testifying in the cause, and if the testimony of any witness is contrary, opposed to, or is positively contradicted by the physical facts in the case, it is not only your privilege, and you are not permitted to attach any credit or weight thereto.

Covered by general charge.

No. 30.

You are instructed that you cannot consider the evidence relating to the Texas Company paying the gasoline rate at all, unless and until you are convinced, beyond a reasonable doubt, that the material shipped was actually gasoline.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 31.

The law never presumes that an act is performed or done with a guilty or fraudulent intention, but required such guilt or fraudulent intention to be established by evidence.

Refused. Exceptions saved. Partially given. R. L. Williams, Judge.

SPECIAL CHARGE NO. 32, REQUESTED BY THE DEFENDANT.

Gentlemen of the Jury: You are instructed that the blending or weathering of the product of the plants at Kiefer, Drumright and Jenks for purposes of transportation did not make it a refined product.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 33.

Gentlemen of the Jury: You are instructed that in order to ship the product of the plants at Kiefer, Drumright and Jenks it was necessary for the defendant to make it conform to the rules and regulations of the Interstate Commerce Commission and that it was entirely proper for this to be done either by weathering or blending the product to such a degree as to make it conform to the said rules and regulations.

Refused. Exceptions. R. L. Williams, Judge.

No. 34.

Gentlemen of the Jury: You are instructed that the word "refine" as used in this case means "to bring an article to a given standard" and may be accomplished either by adding something to in the proper proportions, or by taking something from it to the proper degree.

Refused. Exceptions. R. L. Williams, Judge.

No. 35.

Gentlemen of the Jury: You are instructed that you are not authorized to consider as a refining process anything that may have happened to the casinghead gas below the surface of the earth; in other words, the word "refine" refers to something that man may have done to the article as distinguished from the processes of nature.

Refused. Exceptions. R. L. Williams, Judge.

No. 36.

Gentlemen of the Jury: You are instructed that the term "blending" as the same has been used in this case is a process of refining. You are further instructed, however, that the blending of the product of the plants at Kiefer, Drumright and Jenks with sufficient heavy naphtha to make it conform to the rules of the Interstate Commerce Commission did not necessarily make it a refined article. An article may have undergone some of the processes of refining and still be unrefined.

Refused. Exceptions. R. L. Williams, Judge.

(*Jury retired from the court room.*)

Whereupon court took a recess until 2:00 o'clock p. m.

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Sometime after the jury had retired to their room for the consideration of their verdict, the jury sent word through their bailiff to the judge of the court that they desired to see government's exhibits numbered 61 and 62. The judge of the court sought for counsel for both the government and the defendant but they were out of the court room. After some interval, counsel for the two sides came into the court room and the court stated to the counsel the message he received from the jury room, the jury then and there not being in open court but being in their jury room deliberating. Neither side agreed for said exhibits to be sent to the jury room, but counsel for the defendant in the absence of the jury asked the court to give the additional instructions to-wit:

"1st. That said safe transportation regulations were not rate regulations nor classifications controlling description to be used for rate purposes;

2nd. That the fact that defendant used the description 'gasoline' upon shipments where there were no unrefined naphtha rates applicable, should not be taken as an admission against defendant that the proper name of the commodity in question was gasoline, the use of such name by defendant being obligatory in such cases in order to comply with said safe transportation regulations;

3rd. That the fact, admitted by the plaintiff, that defendant at all times complied with said regulations insofar as affixing the 'dome cover placard' stamp upon its bill of lading, required and permitted only upon shipments containing casinghead product, and from the time said regulations were amended to provide that such product must be designated under the description 'gasoline, casinghead gasoline or casing-head naphtha,' the defendant at all times showed upon its bills, of lading, in addition to the description 'unrefined naphtha,' the further description 'casinghead naphtha 1824-K' should be taken into consideration by the jury as evidence that the defendant did not conceal from the carriers the actual nature of the commodity shipped by it."

After same were requested the court sent the court bailiff to the jury room for the jury for the purpose of having the jury brought into open court and excusing them from further consideration of the case until the next morning, when he intended to pass on this instruction and to further instruct the jury if he thought it advisable. In a few moments the bailiff returned and reported that the foreman of the jury had stated to him that they had arrived at a verdict and in a few moments the jury were brought into open court in the custody of their regular bailiff and then and there returned their verdict which is contained in the record. No the court never had an opportunity to give to the jury the additional requested instructions or to further instruct the jury.

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In the United States District Court for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716.

MOTION FOR NEW TRIAL.

Comes now, the defendant, Gulf Refining Company, and moves the court to set aside, vacate and hold for naught, the

verdict of the jury herein rendered against it on account of errors of law committed on the trial of said cause, to-wit:

First: On the ground and for the reason that the verdict of the jury so rendered against it, is contrary to law and the evidence.

Second: Because said verdict is against the evidence.

Third: Because said verdict is not reasonably supported by the evidence.

Fourth: For errors of law committed by the court on the trial of said cause, in admitting over the objection of the defendant, incompetent, irrelevant and immaterial evidence.

Fifth: For error of law committed on the trial of said cause in permitting evidence that the employees of the Gypsy Oil Company, Carter Oil Company, Smith & Chestnut Company, and Crosbie & Gillespie Company, and a large number of other companies, spoke of and referred to the products of said plants as gasoline, over the objection of said defendant.

Sixth: For error of law committed by the court on the trial of said cause in permitting the witnesses, E. L. League, Haigh and others, to testify as to the custom of the employees of casinghead producers and superintendents of plants, with which this defendant was in no wise connected, of speaking of and describing the casinghead gasoline produced at said plants, by the name of gasoline, over the objection and exception of this defendant.

Seventh: For error of law committed by the court on the trial of said cause, in permitting evidence of the fact that casinghead producers with whom this defendant was in no wise connected, shipped and described in their shipping orders and bills of lading, the products of their casinghead gasoline plants, as gasoline, over the objection and exception of this defendant.

Eighth: For error of law committed by the court in permitting evidence to be given that casinghead producers shipped their product over routes and between points other than those named in the indictment, as gasoline, in the absence of a showing that the same was shipped under the identical or similar circumstances or so shipped and described with the knowledge of this defendant, over the objection and exception of this defendant.

Ninth: The court committed error of law in permitting evidence of the practice of superintendents of casinghead gas plants, and the employees of such plants, as to the manner of

shipping and describing the products of such plants, it appearing that said shipments were made to points other than those mentioned in the indictment and made to refineries over the objection and exception of this defendant, for the reason that said evidence is hearsay as to the defendant, being transactions between persons with whom it was in no way connected, same not shown to be known to this defendant, and not to have been shipped under similar circumstances and conditions under which the products shipped by the Gypsy Oil Company to this defendant were shipped, and not shown to be shipped over routes and between points where there existed a tariff or rate on unrefined naphtha.

Tenth: For error of law committed by the court on the trial of said cause in permitting to be introduced in evidence, to the jury, over the objection and exception of this defendant, government's exhibits numbered 66, 67, 68, 69, 77, 78, 79, 86, 87, 88, 95, 98, 100 to 106 inclusive; and also government exhibits numbered 110 to 117 inclusive; also government exhibits numbered 135, 136 and 138; also government exhibits numbered 120 to 134 inclusive; also government exhibits 10, 11, 12, 13 and 14, and the tabulated statement checked by Witness Otey, numbered— on the ground that the same were incompetent, irrelevant and immaterial to any issue in this cause.

Eleventh: For error of law committed by the court in overruling the motion of the defendant to strike from the record the evidence that employees of casinghead gasoline plants in Oklahoma, called the product produced by them, gasoline, and the evidence of A. W. Barnhart, J. W. Freeman and other witnesses named and set out in said motion, showing the practice of the superintendents of casinghead plants, and the employees thereof, calling the product of said plants gasoline, to which action of the court, the defendant then and there objected to and excepted.

Twelfth: For error of law committed by the court on the trial of said cause in permitting the introduction of that portion of the evidence of the government, which was subsequently stricken out on motion of this defendant, for the reason and on the ground that the same is incompetent, irrelevant and immaterial, and the improper admission of such evidence being prejudicial to this defendant, and to the introduction of which evidence this defendant at the time objected and excepted.

Thirteenth: For error of law committed by the court on the trial of said cause in refusing defendant's motion to in-

struct the jury to bring in a verdict of not guilty, to which action of the court the defendant at the time excepted.

Fourteenth: For error of law committed by the court on the trial of said cause in refusing the motion of defendant to dismiss said cause on the ground of want of jurisdiction of the court to hear and determine the same, and that it appeared from the evidence in the case that there was involved the construction of the tariffs, and that such construction was necessary in order to determine whether casinghead gasoline was included within the meaning of gasoline, as such word was used in the tariffs, the determination of which question is by law vested solely in the Interstate Commerce Commission, to which action of the court the defendant then and there excepted.

Fifteenth: For error of law committed by the court on the trial of said cause in refusing to instruct the jury that a material variance between the allegations of the indictment and the evidence existed, and therefore the jury should bring in a verdict of not guilty on such account, to which action and order of the court the defendant then and there excepted.

Sixteenth: For error of law committed by the court in permitting the introduction of evidence to the effect that there were rates in force after December 28, 1917, governing the transportation of gasoline, whereas, there was no showing that such rates had been lawfully published and filed, or adopted by the Director General of Railroads, in accordance with the statute and the orders of the Interstate Commerce Commission affecting such publication, filing and adoption, to which the defendant then and there excepted.

Seventeenth: For error of law committed in the course of said trial by the attorneys for the government, consisting in improper comment in summing up, to the effect that the United States was pecuniarily interested in the outcome of said trial, and in making improper comments upon the wealth of the defendant, and in making improper comments to the effect that the defendant had violated the safe transportation regulations, notwithstanding the judicial admission of the government to the contrary; this defendant not being on trial on a charge of defrauding the United States, or of violating such safe transportation regulations, and such comment being highly prejudicial and calculated to inflame the jury, and such comment having been excepted to by the complainant.

Eighteenth: For error of law committed by the court in instructing the jury that there were lawfully established, pub-

lished and filed rates governing the transportation of gasoline subsequent to December 28, 1917, the evidence showing no publication, filing or adoption thereof in the manner and form provided by law, to which the defendant was allowed to except.

Nineteenth: For error of law committed by the court in charging the jury that they could look to the rules and regulations governing the safe transportation of explosives and other dangerous articles for the purpose of determining or assisting them in determining, the meaning of the term, gasoline, said regulations being no part of, and having nothing to do with the rate regulations and classifications governing freight rates, to which charge of the court, the defendant was, by the court, permitted to save an exception.

Twentieth: For error of law committed by the court in its general charge to the jury, that articles shipped in Interstate Commerce, should be billed and designated by the name which it is generally called, and if such article is generally used in commerce, its commercial name should be given, and that if an article generally used in commerce, its commercial name should be used, that is, the name by which it is used in commerce. If the article is not an article generally used in commerce and has no commercial name, then the jury should look to its manufacturer and look to those who sell and buy it, to see how it is called, the law being that tariffs named freight rates, are to be strictly construed with respect to the proper technical designation of the article.

Twenty-first: For error of law committed by the court in refusing special instructions of the defendant numbered 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35 and 36, to which action of the court the defendant then and there did except.

Twenty-second: For error of law committed by the court in refusing to give, as requested, or in substance, special instruction numbered 2, 5, 13, 16, 18, 20, 29, 30 and 31, to which action of the court the defendant at the time did except.

R. L. BATTIS,  
JAMES B. DIGGS,  
FRANK M. SWACKER,  
JNO. E. GREEN, JR.  
T. C. HUMPHRY,

*Attorneys.*

And upon consideration thereof the court overruled said motion to set aside the verdict and discharge the defendant or grant it a new trial, to which ruling of the court the defendant then and there duly excepted.

And thereupon the court continued the proceeding from time to time until the 10th day of January, 1921.

Whereupon, at said term, and within the time allowed by law, the defendant moved the court to arrest judgment on each count of the indictment, said motion being in words and figures as follows:

In the District Court of United States for the Eastern District of Oklahoma, United States of America. Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716 Criminal.

**MOTION IN ARREST OF JUDGMENT.**

Comes now the defendant, Gulf Refining Company, by its attorneys, and moves the court to arrest judgment against it upon each count of the indictment upon the following grounds:

1. Because the pretended indictment herein is not a true bill voted by the grand jury in accordance with law, as set forth in defendant's motion to strike the same from the records of the court and its plea in abatement duly filed and forming part of the record herein.

2. Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.

3. Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offense with which it is charged or what it may expect to meet on the trial so as to enable it to make its defense.

4. Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.

5. Because the admissions of the plaintiff and the uncontested evidence show that there is involved a controversy as to the legal construction and application of purpose, of which character of controversy this court has no jurisdiction.

And as to counts 36 to 40, inclusive, and 81 to 85, inclusive, because the said counts are bad for duplicity, in that each of said counts there is attempted to be charged two separate and distinct offenses.

JAMES B. DIGGS,

FRANK M. SWACKER,

*Attorneys for Defendant.*

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Upon consideration whereof the court overruled said motion in arrest of judgment, as to each count of the indictment, to which ruling of the court the defendant then and there duly excepted.

And on said 10th day of January, 1921, the court entered judgment, as appears of record.

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And now on said 10th day of January, 1921, the same being a day within the time heretofore by the court allowed, for the preparation, settling and signing of bill of exceptions herein, comes the defendant, by its attorneys, and prays the court that the above and foregoing may be settled, signed and filed as its bill of exceptions herein.

JAMES B. DIGGS,

FRANK M. SWACKER,

*Attorneys for Defendant.*

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In the United States District Court for the Eastern District of Oklahoma, United States of America. Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716. Crim.

#### ACCEPTANCE OF SERVICE.

We, C. W. Miller, United States Attorney, and J. Stanley Payne, Special Assistant to the United States Attorney, representing the United States in the case of United States of America vs. Gulf Refining Company, No. 3716. Crim., do hereby accept service of the above and foregoing bill of exceptions in the above entitled cause, and do hereby agree that said bill of exceptions shall be approved, allowed and settled, and made a part of the record herein.

C. W. MILLER,

*United States Attorney*

J. STANLEY PAYNE,

*Special Assistant to the United States Attorney.*

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**In the District Court of the United States for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716.**

**ORDER ALLOWING BILL OF EXCEPTIONS.**

And now upon this 10th day of January, 1921, the court having considered the above and foregoing bill of exceptions, and the same having been heretofore served upon the United States Attorney, there being no suggestions of amendment thereto, and the same being now presented within the time allowance made therefor;

It is by the Court Ordered that the said Bill of Exceptions be and the same hereby is settled, signed, and allowed as a true, correct, and complete Bill of Exceptions herein, and the same is hereby ordered filed by the clerk of this court and made part of the record herein.

**R. L. WILLIAMS,**

*Judge.*

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[CLERK'S NOTE:

Exhibits appended to the foregoing Bill of Exceptions will be found beginning Volume II of this Record.]

*ENL*

